IN THE SUPERIOR COURT OF THE STATE OF ARTAO 10 2010 1 IN AND FOR THE COUNTY OF YAVADA BY B. Chamberlain 2 Deputy 3 4 5 STATE OF ARIZONA,) Yavapai Superior Court No. P1300CR20081339 6 Plaintiff, 7 JURY TRIAL vs. 8 STEVEN CARROLL DEMOCKER, 9 Defendant. 10 11 12 ---000---Proceedings held before the Honorable Thomas B. Lindberg 13 ---000---14 June 11, 2010 15 Prescott, Arizona 8:51 a.m. to 4:53 p.m. 16 17 18 19 20 Sandra K Markham, CR, RPR, CSR 21 Certified Reporter 22 Arizona License No. 50001 23 24 **ORIGINAL** 25



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4	Yavapai County Attorney's Office.
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6	Attorney at Law.
7	LARRY HAMMOND, Attorney at Law.
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9	Attorney at Law.
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THE COURT: The record reflects the defendant is present, his attorneys, and the prosecuting attorneys.

We asked to meet with juror number eight a little bit early because of messages and information received from him pertaining to some hardship issues, so my intention was to bring him in and let's hear from him and let both sides ask any questions that they may want.

Margaret, the Jury Commissioner, is also present to potentially respond to any questions that might be asked pertaining to the financial aspects of hardship.

MR. HAMMOND: Might I ask Margaret a question before we bring --

THE COURT: Sure.

MR. HAMMOND: One of the questions that we had been discussing yesterday is how the per diem is paid? When do jurors receive it? Do they get it on a weekly basis or just tell us how that works.

THE COURT: Margaret Merlitz for the record.

JURY COMMISSIONER: The per diem is \$12 per day for the first three days. Once a trial goes into the sixth day, then retroactive to the fourth day, a juror can qualify for additional funds. For those jurors who are unemployed or retired, they can earn an additional \$28 a day and bringing it up to \$40 a day.

Mr. Lopez's situation is that he is employed

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and he is a temp employee as well, and currently I have not received his claim form, so I don't know if his employer is going to be paying him his base salary or not. If they don't pay his base salary, he could qualify for up to \$300 a day and that would include both his base salary as well as his tips.

MR. HAMMOND: And do the jurors all -- have you briefed the jurors on how this works? Do they know what their expectations are in terms of \$12 a day and possible \$40?

JURY COMMISSIONER: I have told them in the groups as they came in, when they were being interviewed, I told them that they would qualify -- could qualify for additional funds and I would give them the paper work. The paperwork sets forth how they do get paid.

So I have had a few jurors commit to the forms and ask me questions, and I answered those questions for them. I have five jurors including Mr. Lopez who have not yet turned in their claim forms to me.

MR. HAMMOND: But you asked him.

JURY COMMISSIONER: I gave them to Mr. King and he gave each juror their claim form.

THE COURT: Referring to the bailiff.

MR. HAMMOND: I see. Thank you. That's helpful to have that understanding.

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THE COURT: All right. That was the other part of the question. How frequently do they get paid? Do they receive it weekly or biweekly?

JURY COMMISSIONER: This is my first super lengthy trial. Normally if it's a trial that's ten days or so, I would pay them for their first three days and I have paid this group their first three days and then I would pay them at the end of the trial.

I am going to be paying them periodically through this trial and it's just going to depend on what pending trials I have. So I am going to try to pay them at least every two weeks.

THE COURT: All right. Thank you. That helps, I think. May have to have you explain that as well to Mr. Lopez when we bring him in.

There are some additional issues aside from the financial issues. Phil, could I have that chair kind of in front of Sandi.

THE BAILIFF: Just want to point him there?

THE COURT: Yes.

THE BAILIFF: Make it real comfortable for him.

(Juror Lopez entered the courtroom.)

JUROR: Good morning.

THE COURT: Good morning. If you don't mind, I am going to refer to you as juror number eight. You may

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be seated if you would.

We have juror number eight with us. All the lawyers and the defendant are present and none of the other jurors are here.

I did receive some information from this juror's employer as well as a note from the juror himself and, of course, I remember the answers that were given during the process of jury selection.

In essence, we have several issues.

Financial issues and then some -- I received a request specifically, I think yesterday, or dated yesterday about some travel that his two older sons are going to be doing June 23rd. I remember some information that we received during the jury selection process about some surgery that your mother was having as well. I guess I'm not recalling instantly what dates those are, but let's start with the issue of the finances and such.

I did bring Margaret, the Jury Commissioner, here to answer any questions that there might be.

I am advised through the Jury Commissioner's office that there is the lengthy jury trial fund that is available with regard to your employment or compensating you for your service here as a juror based on employment.

I am advised that you have not turned that in yet and that does need to be turned in before they can

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act on that. If you need another copy, we will get another copy of it.

Basically, I also received a letter from management at Poco Diablo, your employer, referring to the need that you have for compensation for tips in order to continue with your own personal finances.

JUROR: Yeah.

and, frankly, if you have any questions, I will be happy to have her answer any of those questions. There can be compensation inclusive of -- for tips. Some of the information that she needs, however, deals with information from you and/or your employer about what other days you might be able to work or have been working in comparison to being here. Obviously we know you have been here.

So tips are something that can also be compensated for, but she will need some information with regard to that from you.

So do you have any particular questions about that or comments about how your personal finances may be causing you some additional hardship?

I recognize what the resort said about their need for you, and the lawyers have received a copy of that as well.

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But do you have any more comments as far as financial hardship, hardship on your employer, things like that?

JUROR: Well, pretty much when I am not here, I work. Like last Friday, I was here. When we got over, I got home. They called me. I supposed to work at four in the afternoon next Saturday -- next day I mean, and they call me and told me that I need to be there at six o'clock in the morning. So I work six o'clock in the morning all the way through around midnight.

THE COURT: On Saturday?

JUROR: On Saturday. And clock out. Went home. Take a shower. Go to bed. Wake up around five and go back again at six o'clock in the morning.

THE COURT: On Sunday?

JUROR: On Sunday and I work all the way to around four in the afternoon. Went home. My personal stuff. Next day again six o'clock until --

THE COURT: On Monday?

JUROR: -- until around four or so and that was

THE COURT: And you are back here on -- you were back here on Tuesday.

JUROR: Yeah. So pretty much they told me they gonna work me to death when I am not here, and I'm like

09:01:11 1 okay. As long as I get money, I don't care. 9:01:16 THE COURT: All right. 09:01:18 JUROR: I like my work. I love my job. You're a hard working individual. 09:01:20 THE COURT: And I know what to do in my job. If I 5 JUROR: 09:01:22 didn't know what or how to perform my job, I don't think 6 09:01:28 7 they would not be waiting for me or whenever I am free, 09:01:32 ask me to go back and work, right? 09:01:36 8 9 THE COURT: I understand. 09:01:38 10 JUROR: So besides that, if you gonna pretty much 09:01:40 11 go what I make every two weeks or every paycheck, I don't 09:01:46 really care. I can be here. 09:01:53 12 09:01:55 13 THE COURT: All right. That kind of information -- the paperwork and that kind of information 9:01:56 14 15 may be necessary for the Jury Commissioner. 09:01:59 16 JUROR: The only thing is I need to go back on 09:02:00 09:02:02 17 Monday because their office is open Monday through Friday and they gave me the papers on Tuesday. By the time I got 18 09:02:07 19 home, it's six o'clock and everybody is gone. 09:02:11 09:02:14 20 THE COURT: All right. So your plan is to take 09:02:17 21 the paperwork in --22 09:02:18 JUROR: On Monday. -- on Monday this coming week? 23 09:02:19 THE COURT: And bring it the next time I am here. 24 09:02:21 JUROR:

THE COURT:

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That's fine.

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JUROR: Besides that, well, maybe we can get all -- we can finish with the trial. I know this is important. I know this is serious stuff. I know that's why you guys went through a bunch of people, 300 people or so. That is why we're picked.

THE COURT: Remind me of your mother's situation again.

JUROR: It is going to be on the second week of July. Surgery and I was --

THE COURT: Is it like macular degeneration or --

JUROR: She has --

THE COURT: Glaucoma?

JUROR: She hasn't told me. And pretty much every time she is sick, she always covers the worst part, but that's why I wanted to go.

THE COURT: When you are saying the second week of July, you are saying -- what days, if you know?

JUROR: I don't really know. She said the second week of July and then she told me the next time that you call, we will get a more current date.

THE COURT: July starts on a Thursday. Thursday is the first. So the first, second and third are Thursday, Friday, Saturday.

The next week is the fourth of July through the tenth of July. The week after that is the 11th

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through the 17th. Do you know what she means by the second week?

JUROR: Not really, but I think it is on the 11th. From the 11th to the 17th or 10th to the 17th. Something like that.

THE COURT: And what would be the time frame that you would need to be down there, do you think?

JUROR: If I can have the whole week, because it is 32 hours driving and I am planning on driving. So I don't have money to fly usually. We don't have the money.

THE COURT: All right. Now, tell me about your sons' trip. You are planning -- they are going to Chicago to see relatives or something?

JUROR: Yeah. Grandma and two of my
sisters-in-law.

THE COURT: The kids are eleven and seven?

JUROR: Eleven and seven. That's the first time going by themselves.

THE COURT: You would not be flying them out of the Sedona airport, but rather out of the Phoenix airport?

JUROR: We're going to Phoenix.

THE COURT: Do you know -- you were talking about maybe even needing the whole afternoon off for this purpose. Do you know what time their flight is?

JUROR: 6:30.

09:04:54	1	THE COURT: Six in the evening?
9:04:56	2	JUROR: Uh-huh.
09:04:57	3	THE COURT: Straight up?
09:04:57	4	JUROR: 6:30.
09:04:59	5	THE COURT: 6:30. Sorry. Didn't hear the 30
09:05:03	6	part.
09:05:03	7	So from Sedona that's about a two hour drive
09:05:07	8	or more?
09:05:07	9	JUROR: It's about an hour and 40 minutes.
09:05:12	10	THE COURT: But from here, Sedona is about
09:05:14	11	another hour and 20 minutes or so.
09:05:16	12	JUROR: Something like that.
09:05:17	13	THE COURT: All right. So in order to get them
09:05:19	14	down, get them situated, what's the latest that you would
09:05:24	15	be able to leave in order to get them down promptly for
09:05:28	16	the flight?
09:05:30	17	JUROR: Well, they always say we have to be there
09:05:34	18	like two hours prior to the flight.
09:05:37	19	THE COURT: Yeah. At least one.
09:05:38	20	JUROR: At least one I suppose, because what
09:05:41	21	what we're planning to do is I don't want them to go by
09:05:46	22	THE COURT: So essentially you're saying the
09:05:47	23	whole afternoon essentially, because you would have to
09:05:50	24	leave from Sedona probably no later than three o'clock or
09:05:57	25	so.

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JUROR: Yeah.

THE COURT:

THE COURT: All right.

JUROR: I was trying to speed up the things for them so they don't have to go to luggage claim or baggage claim. Just carry one with them, so they don't have to --

Carry on.

JUROR: -- go through the whole process and I tried to book another flight later on that day or earlier -- I mean some other day. The only thing is it is summer time. Vacation time. Pretty much they got -- I believe it is, they told me, got one flight that leaves at 7:30 or so, the same day. But they had only one seat available and I don't want them to be apart.

THE COURT: You can't do this on a Monday either for a couple extra days.

JUROR: Couple days. Well, I asked about that.

They say for me to move it on a Monday, if they have -- or

Tuesday, if they have space for two, two seats, it would

be like a hundred bucks per person.

THE COURT: More?

JUROR: Uh-huh.

THE COURT: Now, in terms of you going down there, this is necessary for you to go rather than your spouse or somebody else?

JUROR: I don't know how -- who is married.

09:07:23 THE COURT: I think most of the people. 9:07:26 MR. HAMMOND: Nobody is going to say. 09:07:28 JUROR: I don't know how you guys -- how you guys go, but pretty much, when I am driving, she doesn't pay 09:07:29 attention to where I am going. So she doesn't know how to 09:07:31 5 get there, and plus she got the baby that is going to 09:07:34 6 09:07:40 7 be --8 THE COURT: Okay. 09:07:41 09:07:41 9 -- I mean today he is 15 months today 09:07:45 10 and, a car seat, the two boys, luggage, going through 09:07:48 11 that. That's why if she could go by herself, I'd let her go by herself. The most usual thing is she will be going 09:07:53 12 and I won't hear from her in two days. She get lost. 09:08:00 13 9:08:05 14 THE COURT: All right. Thank you. The lawyers may have some questions for you 09:08:06 1.5 09:08:08 16 as well. Ms. Butner. 09:08:11 17 MR. BUTNER: I don't have any questions. THE COURT: Mr. Hammond, Mr. Sears? 09:08:13 18 09:08:17 19 MR. HAMMOND: Let me get there in a second. 09:08:18 20 MR. BUTNER: I am getting advice from Mr. Papore. 09:08:20 21 Maybe I do have some questions. THE COURT: I don't care who asks it. More than 22 09:08:23 23 one can ask. 09:08:25 MR. BUTNER: Is it, with all of this going on in 24 09:08:26 your life, making it more difficult for you to pay 25 09:08:28

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JUROR: You know, every time when I get home, after this, just like I have pretty much like where you been all day. You know where I been, I mean.

THE COURT: And the judge says I can't talk about it.

anything about it. I'm not supposed to know anything about it. All the time I'm going "you are right." Sit down in the courthouse and sitting in a trial and I listen to these persons and that's it. You can't -- you don't have to know anything else about it besides that. Well, she get -- sometimes she's -- oh, no. Sometimes she gets aggravated about that, you know. Sometimes she is like, well, it looks like you don't have time anymore for us.

MR. BUTNER: What about that?

JUROR: That's -- she told me that two days ago and she told me that last night and tell you the truth, these last three days I been sleeping in some other room.

MR. BUTNER: I understand that.

JUROR: I mean doesn't matter how hard I try to please her or I would end up sleeping in another room three nights, so I think that's -- I'm sorry.

MR. BUTNER: That's a hardship.

JUROR: But when I'm here, I'm all ears. When I

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am here, I am supposed to pay attention and that is what I do.

MR. BUTNER: We know you are paying attention.

JUROR: I write my notes. I got some questions.

MR. BUTNER: Is this a personal hardship for you and your family?

JUROR: I thought she was okay at the beginning, but now it is more like she didn't think it was going to be this long. What I think she thought is I was going to be one of the 18. And now that the boys are on vacation, summer vacation, she is like you don't have time for us. They are, like, going by themselves or with the baby-sitters. I get home and I need to clean and I need to feed them and I get home an hour later or so. Pretty much the day is gone for us to do something together.

I guess that is why I pretty much been sleeping in the other room; however, being here is that I don't have time for them.

She understands that it is my civil duty and that I have to do what I have to do and she understands the importance of this trial and the process that we go through and she's like -- she asked me -- well, that for me looks like it is for somebody who doesn't have anything to do because it takes a whole day out of your life. And I mean -- and I told her, well, there's other people.

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1 There other people there that are there like I work.

It would be better if everybody be retired or doesn't have family or something. Well, I mean that -- I know there's that girl. I don't know what is hers. If she works or anything. Not for me to know. But I bet everybody's got a private life, you know, but --

I don't know. I have been married for three years. I am stepfather of those two boys and they love me. I can tell you. Since I get home, I get out of the car. Park the car in the garage. They come out. They cling on me. They hug me. Where you been. How was work. They think I am working. The only thing they don't see is the uniform, but they see me with a backpack and they say you got your uniform in the backpack. Yeah, but I don't show them anything, you know. They -- well, if she told them that I am working, I'm working.

MR. BUTNER: Sure.

JUROR: It was too much work. How come you're working on your days off now. Why don't you tell your supervisor to let you have one day off or take me with you so I can work with you and we get off early. Stuff like that. I mean, he's eleven and seven years old.

MR. BUTNER: Sure.

JUROR: I don't know.

MR. BUTNER: Do you think you need to be excused?

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JUROR: I think I might.

MR. BUTNER: I think everybody here understands what you're telling us.

JUROR: It's not that I don't want to do it.

MR. BUTNER: We know that.

DUROR: I love my country. I born here. I have been here, I don't know, almost all my life. I went to school here. You got friends here. I don't know. If I can respond to my country, you know, and work and be a citizen like everybody else and have duties, can be responsible for everything like any citizen would do, I mean, I'm okay. I am right on. Let's do it.

But if this happened like three years ago before I met her, I was with nobody and the thing is she was okay until it's going to be like this long time.

MR. BUTNER: Right.

JUROR: And then she told me, well, you almost -what she say is you almost got your dead mother in front
of them and they don't let you go. It's not like that. I
mean it's not that they have danger of surgery. The thing
is that I would like to be with her, you know, and if
there is somebody else, that is what they think about.
There is nobody else who can be with her. I go later on
the same morning. They thinking about maybe the trial
ends before or so and I would have time to go there and

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see her. But I mean it's not up to me. I don't know. If I can get excused, I would appreciate that.

MR. HAMMOND: Do you think that, you know, we have all been mindful that this first seven days, you have been on this trial was one of those long weeks. You finished a Wednesday, Thursday, Friday and then only had those three days and you had to work all of those. And now you have had four more days here. So you really have had seven of the last ten days that you have had to be here every day. Now you will have four days and I assume from what you said, you will have to work those days. But I wonder do you think that will make any difference in your being home for four days and then only coming back here for three days? Will that make a difference in the number of days?

JUROR: I don't know. I can explain that and see what she say. Well, as in any marriage, I believe, if you got problems with your spouse, somebody will -- doesn't matter if it's a man or woman, you try to make it up to the person, right? If you are doing something, even that like me, which is not in my power, you have to make it up for the other person, right?

And I do whatever to make it up to her. I know that I gonna work tomorrow, Sunday, Monday, Tuesday. I know for sure that I am going to work. I don't know how

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long I gonna work. I mean, if I gonna take those shifts on the other days or not. But I know I gonna work, but when I am off, I know I am going to be all over them. I mean, in the meantime, I need time with them. I don't know if these four days, like you say, gonna be like easier or make it up to her. I don't know. Of course, going to be a change. Sorry. Because I know at least this Saturday tomorrow, I am not pulling a double shift at work.

MR. HAMMOND: You are?

JUROR: No. But I don't know on Sunday or Monday or Tuesday. I don't know.

MR. HAMMOND: Well, I think you were right when you observed that everyone here, all of us on both sides and the Court, went through a long process to try to find a group of jurors from all different backgrounds and circumstances and very few people are asked to do the kind of very long jury trial that you're doing and it's easy for us to understand how that would create difficulties both at work and at home.

JUROR: If I may say something? If you guys give me Wednesday when I have to pick them up, take them to the airport, she be the happy woman alive. I know that for sure. If I don't get to be excused, she be happy because I have time to take them, spend the day with them and take

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them to the airport. And then Wednesday, three weeks from then, I already pull everything that I could and I have to pick them up around 9:30. Doesn't have to be like going to leave early.

I mean for me, I know that we went through a process, three, four months or so, picking other people, the persons here, and I didn't thought it was going to be -- because I ask some times, some people thinking they know and they are like, well, you get these days off. One day a week and you come here these days and I was like okay. So Wednesdays, be okay, right? But not -- it's not. Monday, Tuesday, or sometimes Monday. And that's it. And that's what I know. I thought sometimes it was like Tuesday -- Monday, Tuesday, Wednesday off and Thursday, Friday and sometimes it was the other way around. I guess I didn't ask the right persons.

THE COURT: I have a question if I might interrupt the lawyers questioning.

Did you just say that you would be required to pick the kids up three weeks after --

JUROR: Yeah.

THE COURT: -- you take them? You are taking them on the 23rd for three weeks.

JUROR: And I picking them up on the 13th.

THE COURT: Is that the same week that you would

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have to be with your mother though?

JUROR: I believe so, and that's why I need to be on my mom which days are the ones because if I am here and if I have to pick up the boys, I guess I am not going anywheres.

THE COURT: Back to you, Mr. Hammond. Sorry.

MR. HAMMOND: If I am hearing correctly, what you said, the one question is what would happen on the 23rd if we could go a half day, that day and I think I heard you say on the 13th you would be picking them up at a time that would not interfere with --

JUROR: No.

MR. HAMMOND: -- with the court schedule on that one day.

Well, Judge, I think I understand from our standpoint where we are. I think maybe could I propose that we have a conversation?

THE COURT: Yes.

MR. PAPORE: I have got a follow-up, Judge.

THE COURT: Go ahead.

Any other questions?

MR. PAPORE: You would be very happy if you got the 20th -- half a day on the 23rd I heard you say. What would happen if you didn't get the 23rd? What would your wife have to say about that?

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JUROR: I don't know. I hear from her tonight. You tell me tonight. I hear from her and I can tell you on Wednesday. I mean she got pretty upset because I talked to her and I told her, you know what, I write a letter and -- so they can know. They know about this, and she came out, well, before you told them about your mom and I don't think they gonna let you off. Let you go or let you have a half day or switch a day. I know you are upset, but there is nothing I can do, you know. And if there was somebody else who knew how to get there and that would be trustworthy, I would --

THE COURT: From your perspective, then, this is something that may not need to be answered today, but will need to be answered sometime before the 23rd, probably no later than next week?

JUROR: No later than next week.

THE COURT: All right. Well, we will try and get an answer to you. We will discuss the matter.

Any other questions before I let our juror go back to the jury room?

MR. HAMMOND: None here.

MR. BUTNER: None from the State. Thank you.

THE COURT: Please don't discuss what's been going on in here. If someone questions you, indicate that the judge told you not to talk about it, but you had to

1 talk to the judge and the lawyers. Leave it at that. 09:22:38 9:22:42 JUROR: Sure. THE COURT: Okay. We will get an answer back to 09:22:42 09:22:45 4 you. 09:22:45 5 JUROR: Thank you. THE COURT: 09:22:46 6 Thank you. 09:22:47 7 (Juror Lopez left the courtroom.) THE COURT: All right. Mr. Butner, Mr. Papore or 8 09:22:55 9 you folks, do you want to have a discussions between the 09:22:58 09:23:01 10 two sides and leave me out of it for a time. Before you 09:23:07 11 start, then give me an answer. 12 Ms. Merlitz. 09:23:09 13 Jury Commissioner: May I be excused? 09:23:10 9:23:12 You may. Sorry. 14 THE COURT: 15 Do you want to discuss it with each other? 09:23:18 09:23:20 16 We will go off record. 09:31:08 17 (Discussion held off the record and whereupon Juror Lopez entered the courtroom.) 09:31:09 18 THE COURT: I didn't bring the chair out again. 19 09:31:10 09:31:13 20 Record can reflect juror number eight is with us again and all of the lawyers and the defendant are present. 09:31:17 21 22 I wanted to let you know what we had 09:31:19 23 discussed and what we are going to attempt to do. 09:31:23 24 The first thing that I would like you to do 09:31:25 25 though is keep in mind that this is a process. I am going .09:31:28

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to need some more information back about your mother's circumstances and what your plans are for picking the kids up and staying here versus going to your mother's and being with her during the surgery. What the timing -- what the precise timing is on the surgery, and we may want to visit again with you next week and see how things are going in terms of your service.

What we have decided, what I have decided is to probably take the afternoon of the 23rd off, so that you can do that transportation back. We are interested, because of the things that you said, in your serving on this jury. If we can try to help accommodate that, we will try to accommodate that. If it simply seems impossible and going to be too much of a hardship on you and your family, your relationship with your spouse and those sorts of things, I am willing to take another look

If you are not on the jury because it's just become too much of a hardship to you through next week, when as Mr. Hammond says we are going to have a little bit more time.

JUROR: More time.

THE COURT: It has been very intense so far in terms of the amount of time that we have demanded from you as part of the jury and it is like a job. You're working

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1 hard as a juror listening to all of the evidence.

JUROR: And the thing is like Saturday it was like have dinner together or something, but since I work the whole day more like you are not at home anymore.

THE COURT: Well, as the lawyers correctly point out, the week that we are talking about of the 22nd, 23rd, 24th, 25th is another one of those four day weeks anyway. So I don't know if they'd particularly object to having half a day off from your fellow jurors. But don't talk to them about the schedule at this point because that isn't decided yet at this point.

If you're excused because of other hardship to you, I may have a full four day week for the rest of them. So if you were to tell them we are going to have that half a day off, they are going to be expecting it. So don't tell them anything about our conversation.

JUROR: Not at all.

THE COURT: But I am willing to try to accommodate your needs for that time frame to get your sons to the airport. My understanding when they come back, they are coming back at a time that you would not need to have that accommodation. They are coming back later I guess apparently.

JUROR: Later.

THE COURT: So we will try and work with you, but

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I will have some additional information from you next 09:34:21 1 9:34:24 2 week. 09:34:24 JUROR: You want me to bring the flight times? That's unnecessary, but we may 09:34:27 4 THE COURT: No. 09:34:32 5 want to talk with you next week. About how it went with my wife on the 09:34:33 6 JUROR: 7 weekend. 09:34:36 THE COURT: Pardon? 09:34:37 8 JUROR: About how it went with my wife on the 9 09:34:39 weekend? 10 09:34:41 THE COURT: In a sense, yes, sir. 09:34:41 11 MR. BUTNER: Good luck. 09:34:46 12 That is what we're talking about, right. 09:34:47 13 JUROR: THE COURT: At work and family life. 9:34:50 14 15 09:34:55 JUROR: Okay. THE COURT: Whether you are serving on this jury 09:34:56 16 17 is going to be a hardship. That is the way I would phrase 09:34:58 If it's going to be a continuing hardship, based on 18 09:35:00 things other than getting your sons down to the airport 19 09:35:06 09:35:08 20 and back again, we may need to discuss this matter 09:35:13 21 further. Tomorrow is when I talk to my mom on the 22 09:35:13 JUROR: 23 weekend. 09:35:15 24 THE COURT: Yes, please. 09:35:16 Tomorrow I will ask her pretty much which 25 09:35:17 JUROR:

09:35:20 1 is exact dates. 9:35:21 Please. And whether and to what THE COURT: extent she needs you down there. What kind of -- if the 09:35:24 09:35:28 doctors have told her how dangerous this is or not. Ιf it's life threatening or things like that. We would 09:35:32 5 probably want to meet with you next Wednesday or Thursday 09:35:37 09:35:40 about these things again. 09:35:42 8 JUROR: Okay. 9 THE COURT: Okay. But just wanted to relieve 09:35:43 09:35:46 10 your mind a little bit if you're still on the jury, I 09:35:49 11 probably will be taking the afternoon of the 23rd off. 12 Thank you. Thank you very much. 09:35:52 JUROR: 13 THE COURT: You're welcome. If you'd go back, we 09:35:54 9:35:55 14 will call everybody back in in a little bit. 15 (Juror Lopez left the courtroom.) 09:35:57 Record reflects the juror has left 09:36:01 16 THE COURT: 09:36:03 17 the room. Any other issues that you want to take up? 18 09:36:03 09:36:05 19 MR. SEARS: I never got a -- started and I need 09:36:07 20 about five minutes. THE COURT: We will take a brief recess. Let you 09:36:09 21 22 all get set up. 09:36:13 23 Thanks, Judge. 09:36:16 MR. BUTNER: Thank you, Judge. 09:36:16 24 MR. PAPORE: 25 (Recess.) 09:36:18

10:00:14 1 THE COURT: Record can reflect the presence of 0:00:20 2 the jury, the defendant, all defense counsel, and the 10:00:23 3 prosecution team. 10:00:24 I sincerely apologize for the lengthy delay that we have had this morning. We had some legal issues 5 10:00:29 that had to be taken up, and I hope you understand that 10:00:31 6 and don't hold it against either side. 7 If you need to 10:00:35 hold it against somebody, blame it on me. I have hopes 10:00:38 that the delay will actually expedite the process this 9 10:00:46 10 morning and make it a little bit more efficient. 10:00:51 10:00:54 11 Mr. Butner, your next witness. 10:01:08 12 MR. BUTNER: Thank you, Judge. Judge, I need to call these people out of 10:01:09 13 order, Judge. I would like to call, first of all, Larry 10:01:12 14 15 Peterson, please. 10:01:16 THE BAILIFF: Raise your right hand for the 10:02:06 16 10:02:08 17 clerk. LARRY PETERSON 18 10:02:08 called, sworn, and testified as follows: 19 10:02:17 10:02:17 20 THE BAILIFF: Careful of the steps. 10:02:20 21 seat. DIRECT EXAMINATION 22 10:02:26 MR. BUTNER: 23 10:02:27 24 Good morning. 10:02:27 Q 25 Good morning. 10:02:28 Α

1	Q Please state your name for the record, sir.		
2	A Larry Peterson.		
3	Q And what is your occupation?		
4	A I am a school administrator.		
5	Q And where do you perform your profession as a		
6	school administrator?		
7	A Currently, I am the principal of Abia Judd		
8	Elementary School here in Prescott.		
9	$oldsymbol{Q}$ And how long have you been the principal of Abia		
10	Judd?		
11	A Three years.		
12	Q And where do you currently reside?		
13	A 2755 Love Lane, Prescott.		
14	Q And is Love Lane out Williamson Valley out		
15	Williamson Valley Road?		
16	A Yes. Five-and-a-half miles out Williamson Valley		
17	Road. It's a street that only goes to the left there.		
18	Q Okay. Five-and-a-half miles from where? From		
19	Abia Judd?		
20	A From the Iron Springs intersection of Williamson		
21	Valley and Iron Springs.		
22	Q Okay. And you turn left to get on Love Lane and		
23	go up toward Granite Mountain?		
24	A That's correct.		
25	Q And were you residing at 2755 Love Lane on July		
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the 2nd of the year 2008?

A Yes.

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Q Would you describe your residential property there for us, please?

A We have a little bit more than two acres. Our driveway happens to be a trail, apparently, a horse trail. Granite Mountain Stables, which is about three-quarters of a mile from our place, routinely use our driveway as part of their trail rides. You come down the driveway, which is about, oh, 150 yards maybe and then it makes a right and it becomes the trail that goes up into the Granite Mountain wilderness area.

- Q Is that Trail 309 if you know?
- A I don't know. I use it all the time, both hiking and horseback riding, but I am not aware of the name or the number of that trail.
- Q Okay. And relative to your residence, it runs right besides your residence, right?
 - A That's correct.
- Q Is it -- can you see a trail designation as to where this trail exists?
- A There really is no designation there. In fact, there's a sign down by our mailbox that says that it's not a public access, but most people seem to ignore that.
 - Q Okay. And this trail, it just runs across your

1 private property, right? 10:05:14 10:05:16 It runs right on the border of our -- I guess that would be the southern portion of our property. 10:05:21 And there's a well house right near the trail? 10:05:25 Q Yes. 10:05:30 5 A And who does that belong to? 10:05:30 6 Q 10:05:32 7 I believe that's Granite Mountain Water Company. Okay. And then it goes across this area and then 10:05:35 Q it joins sort of a wash behind your house, right? 10:05:39 9 10:05:42 10 A The wash is actually part of the trail right 10:05:44 11 there. It's a very sandy wash. The wash runs on down through our property and our property is on both sides of 10:05:48 12 that wash; however, the trail makes a -- almost a right 10:05:51 13 angle to the left as you're going toward Granite Mountain. 10:05:55 14 15 It goes up the wash for a ways. 10:06:00 Are you a mountain biker also in addition to 16 10:06:03 Q 10:06:08 17 being a hiker and a horseback rider? Occasionally. 10:06:10 18 Α Is that a good trail for riding a mountain bike 19 10:06:11 Q 10:06:15 20 on? I have never done it. 10:06:16 21 A 22 And why have you never done it? 10:06:18 0 23 Well, to my estimation, with my skill level, it 10:06:21 A would be difficult to traverse with a bicycle. 2.4 10:06:26

And why is that?

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A Well, it's very sandy and rocky and steep and it goes in and out of the wash about three times in the first half mile.

Q It does join another trail further to the south and a little bit to the west, I think, right?

A Yes.

Q And is that a decent trail for mountain biking so to speak?

A There are a lot of mountain bikes, so I would have to say yes. I have never ridden back there, but I would say yes.

Q Do you see many mountain bikes on that little trail that runs from your property into the sandy wash?

A Not very many.

Q Taking you back to July 2nd of the year 2008, were you residing at Love Lane on that date?

A Yes.

Q What part of your residence faces the trail? If you could describe it for us, please.

A Well, it's the length of the house. We have a total of four windows that face the trail. That would be generally to the south. The four windows are each six feet wide by five feet high and they run the length of that wall facing the trail.

Q Okay. And do you also have pets, animals?

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- A We have two Labradors.
- And going back to the evening of July the 2nd of the year 2008, and I realize this is a lot to ask of you, but do you recall anybody going by your house on that trail in the evening hours from approximately 5:30 to approximately seven o'clock in the evening?
 - A No.
- **Q** Would you have noticed somebody going by there on a mountain bike?
- A Not necessarily. We have wooden blinds that are sometimes open and sometimes closed.
- **Q** At that time of year, at that time of day, what is the status of your blinds customarily?
- A Customarily because the sun has moved around to the western side of the house, we would open the blinds in the evening.
- **Q** Would you have taken note of somebody going by on a mountain bike during those hours if you had been in a position to see the trail?
- A It's possible. Not necessarily, but it's possible.
- **Q** Would it be unusual for you to see somebody going by on a mountain bike in that area?
 - A Yes.
 - Q And why is that?

1 Again, the terrain doesn't lend itself very well 10:09:23 Α 0:09:27 in my estimation, and also our experience has been that there have not been very many mountain bikers coming 10:09:31 3 10:09:36 through that area. 10:09:38 5 Q And your dogs, are they usually outdoor type 6 dogs? 10:09:48 10:09:48 7 They're both in and out. Do they bark at people that go by on the trail? 8 10:09:50 Q 9 A They do. 10:09:54 10:09:55 10 Q And do you recall again any of dogs barking at anybody going by that trail during the hours of basically 10:10:01 11 5:30 to 7:00? 12 10:10:05 13 10:10:07 A No. 10:10:15 I don't have any further questions 14 MR. BUTNER: 15 of this witness at this time. 10:10:16 THE COURT: Mr. Sears. 10:10:18 16 CROSS-EXAMINATION 10:10:21 17 MR. SEARS: 10:10:22 18 Mr. Peterson, my name is John Sears. I am one of 10:10:22 19 10:10:24 20 the lawyers that represents Steve Democker here. You talked to one of our investigators back 21 10:10:26 on April 29th of this year. Do you remember that? 22 10:10:29 23 Dougherty? 10:10:35 10:10:35 24 Yes. She was asking you about a number of the same 10:10:36 25 Q

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things that Mr. Butner just asked you about here and she asked you about your dogs, and my understanding is that in the evening time, the dogs come inside the house, right?

- A Yes.
- Q Okay. And you told Ms. Dougherty that the dogs wouldn't bark when they're in the house because they live -- you know, there are a lot of hikers. That's -- the dogs might bark if they're outside if somebody went by, but not necessarily if they were inside the house?
 - A That's accurate.
- **Q** Do you have any particular recollection of Wednesday, July 2nd, 2008?
 - A No, I don't.
- **Q** Okay. Do you even know if you were home that evening?
- A We told the investigator near that time that we were. Two years later I can't say that I was. But if we said we were, we must have based it on recollection at the time we talked to the investigator.
- **Q** And my understanding basically is you told them that you didn't see or hear anything in that time period going by on the trail next to your house; is that right?
 - A That's correct.
- Q But if I understand what you are saying here today, is that doesn't necessarily mean that somebody

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didn't go by?

- A That's correct.
- **Q** Okay. And the dogs didn't bark because perhaps they were inside?
 - A That's correct.
- **Q** And you didn't see somebody because you weren't looking out one of those four large windows on the south side of your house?
 - A That's a possibility, yes.
- You said you haven't noticed in the time you have lived there very many mountain bikers using that trail, and I think you told Ms. Dougherty that during the school year both you and your wife work and were away from home most of the day during the week?
 - A Yes.
 - Q And on the weekends were you always at home?
 - A No.
- **Q** Would you be outdoors doing other things or traveling or away from home?
 - A Yes.
- **Q** And apart from the fact that you personally thought that it was a tough ride at your skill level, apparently other mountain bikers were able to negotiate that little piece of the trail that goes next to your house that hooks up with the easier trails?

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- A Based on what I have seen, apparently some people do go that way.
- Q It's pretty amazing what some people can do on a mountain bike, isn't it?
 - A I guess.
- Q Okay. And have you seen mountain bike tracks in the dirt along that trail? That little spur that goes along next to your house, have you seen bicycle tracks from time to time in the dirt there?
 - A I can't say I have.
 - Q Are you sure that you haven't?
 - A I am not sure.
- Q It's possible and it just wouldn't have been something that you would have been paying much attention to. Is that fair to say?
- A I'm -- well, I look for tracks. I look for animals tracks and horse tracks and things like -- I don't -- I am not looking for bicycle tracks, no.
- And you said that horseback riders use that -that trail. That actually organized trail rides from the
 stable would come down your driveway and turn on this
 little piece of the property there and cut across to get
 up into the Granite Mountain wilderness area, correct?
 - A Yes.
 - Q And there's some indian ruins not far from your

10:14:08 0:14:11 10:14:15 10:14:16 10:14:22 5 10:14:25 10:14:27 7 10:14:30 -8 9 10:14:30 10 10:14:34 10:14:36 11 12 10:14:41 13 10:14:44 10:14:44 14 15 10:14:45 10:14:49 16 10:14:51 17 18 10:14:55 10:14:56 19 10:14:59 2.0 21 10:15:01 22 10:15:03 23 10:15:07 24 10:15:08

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property that was part of the trail ride system?

A They don't go up there, but it is within hiking distance of our house, yes.

Q And other recreational horseback riders from time to time will cut through and go down your driveway and then cross on this trail?

A Yes. Neighborhood folks and I use it as well with my horse.

Q If I told you that I didn't know this for a long time, that I didn't know until I became involved in this case that the Forest Service put a number on your trail, and I knew that by seeing a map, would that be news to you?

A I'm sorry?

Q Bad question. I think you said that you weren't aware until you were told that the Forest Service had actually assigned a three digit number to that piece of the trail next to your house?

A Actually I had seen it on a map one time, but there is no -- no trail head number there. There's nothing to mark that it is a trail.

Q Do you know where Boone Court is in relation to your home?

- A I have a vague idea of where it is.
- Q Interesting if the map shows the trailhead for

0:15:21 2 10:15:26 10:15:30 10:15:33 5 10:15:35 6 10:15:36 7 10:15:37 8 9 10:15:41 10:15:43 10 10:15:47 11 10:15:51 12 13 10:15:54 0:15:55 14 15 10:16:00 10:16:02 16 10:16:06 17 18 10:16:20 19 10:16:23 10:16:26 20 10:16:33 21 22 10:16:37 23 10:16:41

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Trail 309 being on Boone Court which is a cul-de-sac after Rainmaker, and to get there from your house, you would go across your driveway and walk in the opposite direction from your house walking away from Granite Mountain up that gravel driveway, did you know that was part of the trail system?

- A No.
- Q And that if a person were following the Forest Service map, they would park up on Boone Court and ride that little gravel driveway down and continue across your driveway and catch that single track trail by your house. Did you know that is what Trail 309 shows on the map?
 - A No.
- **Q** Have you ever seen anybody park up on Boone Court that appeared to be using the trail?
 - A That would be out of my view, I think.
- Q Is there a piece of that trail that also goes behind your property on the opposite side from your driveway? Does the trail branch off?
- A The wash runs through the middle of my property, but that's not part of the trail. I have noted people coming down the trail from the Granite Mountain area and they will be walking behind our house and I sometimes have redirected them back up to where the trail cuts to the south side of our house.

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10:17:37	19
10:17:39	20
10:17:40	21
10:17:42	22
10:17:42	23
10:17:43	24
10:17:44	25

- **Q** So that's not -- that wash is right across your property and as far as you know not part of any trail system?
 - A As far as I know, it's not.
- **Q** But from time to time you have seen people. Have those people been on foot or horseback?
 - A Generally on foot.
- Q And does that wash then go out and connect Love Lane? If you kept on going past your house, would you eventually come across Love Lane?
 - A Yes.
- **Q** Did you ever see anybody in that wash on a bicycle?
- A There was one case where a father and a couple of kids came down. They had gotten caught in a rain storm and they were obviously distressed, and I helped them come up out of the wash and took a garden hose and washed the mud off the bicycles so they could continue, but that's the only one that I recall being down in that wash.

MR. SEARS: Okay. Thank you. I don't have any other questions for Mr. Peterson.

Thank you, your Honor.

THE COURT: Redirect.

REDIRECT EXAMINATION

MR. BUTNER: Thank you, sir.

1 10:18:12 0:18:21 10:18:24 3 10:18:25 4 10:18:28 5 10:18:37 10:18:46 7 10:18:48 8 10:18:51 9 10:18:53 10 10:18:54 11 10:18:58 12 13 10:19:02 0:19:04 14 10:19:14 15 10:19:20 16 10:19:20 17 18 10:19:20 10:19:24 19 10:19:27 20 10:19:31 21 22 10:19:34 23 10:19:37 10:19:39 24

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Q Just to clarify, we do have a laser printer -pointer -- I keep on wanting to say laser printer.

Thank you, Judge.

Do you recognize what is depicted in this particular map, Exhibit Number -- oh my gosh -- I will never find that here. Exhibit 2312.

Thank you. Thank you very much.

Do you recognize what is depicted in Exhibit

2312?

A Yes.

Q Okay. Would you take the laser pointer and point to where your house is located on this map, if you can, or at least approximately?

A Ah, I think right about there.

Q Okay. Just up Love Lane there from Williamson Valley Road?

A Yes.

Q Then the trail starts right beside your house and goes back on up towards Granite Mountain?

A This is the driveway and then this would be the beginning of the actual trail. Part of that is the wash and the wash runs behind my house, so the house is right there in that corner.

Q So you catch the wash at the corner of your property there after walking across the single track or

10:19:48 1 riding a horse or whatever across the single track on your 10:19:51 property line basically? 3 Actually the driveway, I thought the driveway was 10:19:53 part of the trail. At least that's what Granite Mountain 10:19:58 Stables uses. They come down the driveway, they make a 10:20:02 5 right-hand turn, and that looks like a trail. The trail 10:20:05 6 7 goes for about a hundred feet and then it makes a left 10:20:09 turn into the wash. 10:20:14 9 Okay. And turns off of your property into the 10:20:16 Q 10:20:20 10 wash and heads off toward Granite Mountain? 10:20:22 11 Α Right. 12 MR. SEARS: Okay. Thank you. No further 10:20:24 10:20:28 13 questions. THE COURT: Members of the Jury, I see a question 10:20:29 14 10:20:34 15 or two. Bear with us if you would, Mr. Peterson. 16 We 10:20:38 10:20:40 17 have to discuss these first. If I may see the lawyers, please. 18 10:20:44 QUESTIONS BY JURY 10:22:22 19 10:22:22 20 THE COURT: I have a couple of questions, Mr. Peterson. 10:22:24 21 How long have you lived at this particular 22 10:22:26 23 residence? 10:22:29 THE WITNESS: I think we have been there five or 10:22:30 24 25 six years. 10:22:35

1 This one I guess I will leave to your 10:22:36 THE COURT: 10:22:46 2 answer. How long is the wash? Where it begins -- where I see it 10:22:51 3 THE WITNESS: beginning as part of the trail system, to Love Lane, it 10:22:59 4 would probably be 150, 200 yards maybe and then it goes 10:23:08 5 through two large culverts and then continues on. 10:23:15 6 7 that, I don't know where it comes out. 10:23:20 THE COURT: All right. Other questions 10:23:21 8 9 pertaining to that? 10:23:24 10:23:25 10 MR. BUTNER: No further questions, Judge. Thank 10:23:27 11 you. Mr. Sears? 10:23:27 12 THE COURT: 13 MR. SEARS: No, your Honor. 10:23:28 Any objection to excusing 10:23:30 14 THE COURT: 15 Mr. Peterson? 10:23:32 10:23:33 16 MR. BUTNER: No objection. 10:23:34 17 MR. SEARS: No, your Honor. THE COURT: Does he need to be subject to any 18 10:23:35 19 recall? 10:23:37 10:23:39 20 MR. SEARS: Not by us, your Honor. Thank you. MR. BUTNER: Not by the State, Judge. 10:23:40 21 22 Mr. Peterson, you are excused. You THE COURT: 10:23:42 23 will not be called back to testify any further in the 10:23:44 So thank you for your testimony. You may step 24 trial. 10:23:47 25 down. 10:23:50

10:23:50	1	THE WITNESS: Thank you.
10:24:03	2	MR. BUTNER: Cathy Peterson, please.
10:24:48	3	THE BAILIFF: Just raise your right hand for the
10:24:51	4	clerk.
10:24:51	5	CATHERINE PETERSON
10:24:58	6	called, sworn, and testified as follows:
10:24:58	7	THE BAILIFF: You can bring your purse along.
10:25:00	8	That's fine. Watch those steps.
10:25:09	9	DIRECT EXAMINATION
10:25:10	10	MR. BUTNER:
10:25:10	11	Q Good morning.
10:25:13	12	A Morning.
10:25:14	13	Q Please state your name for the record.
10:25:16	14	A Cathy Peterson.
10:25:17	15	Q And you're married to Larry Peterson?
10:25:22	16	A Yes.
10:25:23	17	Q Okay. And you reside at the same address he
10:25:26	18	does?
10:25:26	19	A Yes.
10:25:27	20	Q What is that address again please?
10:25:28	21	A 2755 West Love Lane, Prescott.
10:25:32	22	Q And how long have you lived at 2755 West Love
10:25:37	23	Lane in Prescott?
10:25:38	24	A I hope we say the same thing. Five or six years.
10:25:46	25	Q You are consistent.

10:25:50	1	A	Good.
0:25:50	2	Q	Were you residing at that address on July the 2nd
10:25:56	3	of the ye	ear 2008?
10:25:58	4	A	Yes.
10:25:59	5	Q	Are you aware that there is some sort of a trail
10:26:04	6	that is	in close proximity to your residence?
10:26:07	7	A	Yes.
10:26:07	8	Q	Would you tell us where that trail is located,
10:26:11	9	please.	
10:26:11	10	A	It goes right beside our house.
10:26:15	11	Q	Can you tell from any kind of signs or other
10:26:21	12	designate	ors that there is a trail there?
10:26:24	13	A	Signs? Really, no.
20:26:33	14	Q	Okay. How wide is the trail as it runs right
10:26:36	15	beside yo	our house?
10:26:37	16	A	Like this wide (witness indicating).
10:26:42	17	Q	About three feet wide?
10:26:43	18	A	There you go.
10:26:44	19	Q	And it runs right along your southern property
10:26:48	20	line; is	that correct?
10:26:49	21	A	Yes.
10:26:49	22	Q	And where does it go once it goes along your
10:26:52	23	southern	property line?
10:26:53	24	A	It goes down into the wash. So if you go out our
10:26:58	25	back doo:	r, you go down the wash and then you just hit the

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Granite Mountain trail.

Q And do you get much traffic along the trail there near your property?

A We do some. We get quite a few horseback riders and some hikers and some bike riders.

Q Okay. Have you ever seen a mountain bike rider go along the trail right there by your property?

- A Yes.
- Q How many times?
- A Um, I don't -- I don't know exactly.
- Q Okay. A lot? Is it frequent?
- A It's fairly regular, but there are more horseback riders than bikers that come there.
- **Q** Have you ever ridden a mountain bike on this area of the trail?
 - A No. I hike.
- Q Is it difficult riding along that area for a mountain bike rider?

A It is. The trail by our house, right by our house, it's very bumpy and rough, so most of the -- I am out there a lot. Most of the bike riders don't start by our house. They start at the trailhead.

- Q Okay. And the trailhead is located where?
- A About a mile up from where we are. Granite Mountain trailhead.

		ľ	
10:28:24	1	Q	It's much better for mountain bike riding at that
10:28:30	2	location	?
10:28:30	3	A	That would be my impression.
10:28:32	4	Q	You ride a horse?
10:28:34	5	A	No. I hike.
10:28:35	6	Q	Just hike. Okay. Your husband is the horse
10:28:38	7	rider?	
10:28:38	8	A	He is the horse rider.
10:28:39	9	Q	Okay. And going back to the specific date of
10:28:45	10	July 2nd	of the year 2008, in the evening hours from
10:28:52	11	approxima	ately 5:30 to seven o'clock, were you home on that
10:28:57	12	date?	
10:28:58	13	A	Well, we were. We yes, we were.
10:29:02	14	Q	And do you recall any mountain bike riders going
10:29:08	15	by your :	residence between those hours, 5:30 p.m. to
10:29:12	16	approxima	ately seven p.m. in the evening?
10:29:15	17	A	I don't.
10:29:17	18	Q	If a mountain bike rider had gone by your
10:29:20	19	residence	e during that time frame, do you think you might
10:29:22	20	have take	en note of it?
10:29:24	21	A	It's possible.
10:29:26	22	Q	Would it have been unusual an unusual
10:29:31	23	occurren	ce for you to see that?
10:29:32	24	A	Not necessarily.
		I	

Q But at this point you don't have any recollection

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of such a rider anyway?

A Well, not from two years ago.

MR. BUTNER: Okay. I don't have any further questions. Thank you.

THE COURT: Cross.

THE WITNESS: Pardon me. I'm sorry. This isn't typically what I do.

CROSS-EXAMINATION

MR. SEARS: You are not the first.

Q My name is John Sears. I am one of the lawyers for Mr. Democker here.

And you have never been interviewed by the police in connection with this case, have you?

A Um, the sheriff come to our home, I'm thinking, two or three times.

- Q How recently?
- A It's been quite a while.
- Q We have a telephone interview that your husband did with detectives back in July of 2008 that doesn't have you on the phone. It's just a phone call between your husband Larry and the detective. Have you personally talked to the police yourself?
 - A No. I don't think so.
 - They always would talk to your husband?
 - A Well, I can't speak for him; however, what I can

10:30:50	1	tell you is the sheriff had came to our house two or three
10:30:54	2	times and that was my interaction.
10:30:56	3	Q Did they ask you questions?
10:30:58	4	A Yes.
10:30:59	5	$oldsymbol{Q}$ Did you show them the trail?
10:31:00	6	A Well, you just come to our house and you can
10:31:04	7	it's evident.
10:31:05	8	Q It's right alongside of your house?
10:31:08	9	A Correct.
10:31:08	10	$oldsymbol{Q}$ Did you know that was a trail when you bought the
10:31:10	11	house? Were you told that was a trail?
10:31:12	12	A Yes.
10:31:13	13	Q It wasn't a surprise?
10:31:15	14	A No.
10:31:15	15	Q On this particular night in July, do you have a
10:31:20	16	clear recollection of watching carefully out the windows
10:31:25	17	in the outside of your house to see who was going by on
10:31:28	18	the trail?
10:31:28	19	A No. We don't watch 24 hours a day.
10:31:32	20	$oldsymbol{Q}$ And is it possible in the evening that the blinds
10:31:36	21	on those windows might have been closed for part of that
10:31:38	22	period of time?
10:31:39	23	A It's possible.
10:31:40	24	Q Your husband was talking about your dogs. You

10:31:43 25

had some labs?

10:31:43 1 0:31:44 10:31:47 10:31:50 10:31:54 5 10:31:54 7 10:31:58 10:32:00 -8 9 10:32:02 10:32:05 10 10:32:06 11 10:32:08 12 10:32:08 13 0:32:10 14 15 10:32:14 10:32:16 16 10:32:19 17 10:32:25 18 10:32:29 19 10:32:31 20 10:32:31 21 22 10:32:34 23 10:32:35 10:32:36 24

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10:32:38

A Yes.

And your husband said that sometimes they bark and sometimes they didn't. He said they're not much of a guard dog. That was his take. Is that your experience with them?

A Well --

Q I don't mean to put you at odds with your husband. The quality of your dogs.

A Typically they're more guard dogs when he is not home.

Q Was your husband home that night?

A Yes.

Q Were the dogs inside?

A You know, frankly I don't -- I can't remember.

They could have been out. They could have been in.

Q Let me see if I can put this question pretty directly here. You don't remember seeing anybody ride a bicycle by your home on this trail the night of July 2nd, 2008. Is that fair to say?

A That's correct.

Q But is it also possible that somebody did and you simply didn't see him?

A Yes.

Q Is it also possible that you saw them and you have just forgotten?

10:32:40	1	A	Sure.
10:32:41	2		MR. SEARS: Thank you. No other questions.
10:32:43	3		THE COURT: Redirect.
10:32:45	4		MR. BUTNER: No further questions, Judge. Thank
10:32:47	5	you.	
10:32:47	6		THE COURT: Members of the Jury? Members of the
10:32:51	7	Jury, do	you have questions? I have at least one, if I
10:32:57	8	could see	e the lawyers please.
10:33:00	9		(Discussion held off the record.)
10:34:16	10		QUESTIONS BY JURY
10:34:16	11		THE COURT: Ms. Peterson, we have a few questions
10:34:22	12	from the	jurors.
10:34:23	13		Question. Is your yard fenced?
10:34:27	14		THE WITNESS: Um, we have a fenced area for our
10:34:31	15	two dogs.	
10:34:33	16		THE COURT: Relates to the next question I
10:34:35	17	suppose.	Where do the dogs go when they are out?
10:34:39	18		THE WITNESS: They hike with me, but only when
10:34:44	19	I'm there	e; otherwise, if they're outside, they're in the
10:34:47	20	fenced ya	ard.
10:34:48	21		THE COURT: So the question is: Do they stay in
10:34:52	22	the yard	only? I think you covered that. Does your
10:34:56	23	testimony	y cover that question?
10:34:57	24		THE WITNESS: Yes. Their area is right by the
10:35:01	25	trail.	

10:35:01	1	THE COURT: Generally what time do you bring the
10:35:05	2	dogs inside in the summer?
10:35:08	3	THE WITNESS: Well, frankly it depends on what
10:35:11	4	time we get home from work, and because of our work
10:35:14	5	schedules, that can vary quite a bit.
10:35:19	6	THE COURT: Oops. Got one more.
10:35:24	7	Don't leave yet.
10:35:32	8	(Discussion held off the record.)
10:36:08	9	THE COURT: The other question is: Did you hear
10:36:17	10	the dogs barking that night, if you know?
10:36:21	11	THE WITNESS: I don't know.
10:36:25	12	THE COURT: Any other questions for Ms. Peterson?
10:36:30	13	I don't see the lawyers with their hands up either.
10:36:34	14	MR. BUTNER: No further questions from the State,
10:36:35	15	Judge.
10:36:36	16	THE COURT: Mr. Sears?
10:36:37	17	MR. SEARS: If I could have brief follow-up, your
10:36:38	18	Honor.
10:36:38	19	THE COURT: Go ahead.
10:36:39	20	RECROSS-EXAMINATION
10:36:39	21	MR. SEARS:
10:36:39	22	Q Ms. Peterson, this may be too much of a
10:36:43	23	hypothetical, but if your dogs barked from time to time
10:36:49	24	when they were outside, would you or your husband go to
10:36:52	25	see what they were barking at every time?

10:36:56	1	A Commonly we do, yes.
10:37:00	2	Q If you were home, right?
10:37:03	3	A Right.
10:37:04	4	Q If you weren't doing something else like talking
10:37:06	5	on the phone or eating dinner, right?
10:37:09	6	A No. We look outside quite a bit, because we live
10:37:15	7	where we live and we like to see what's going on.
10:37:18	8	$oldsymbol{Q}$ If I understand though, on the night in question,
10:37:20	9	you don't remember whether the dogs were inside or out
10:37:24	10	A Correct.
10:37:24	11	Q during this time period. You don't remember
10:37:26	12	whether they barked or not, right?
10:37:28	13	A Correct.
10:37:28	14	Q And you don't remember whether you saw somebody
10:37:30	15	or not, right?
10:37:30	16	A Well, I I don't recall that I did, no.
10:37:35	17	MR. SEARS: Thank you. No other questions.
10:37:37	18	THE COURT: Any other questions from the jurors?
10:37:40	19	I don't see any affirmative responses there.
10:37:43	20	Any other questions from you, Mr. Butner?
10:37:45	21	MR. BUTNER: None from the State.
10:37:46	22	THE COURT: May I excuse this witness to go about
10:37:47	23	her business?
10:37:48	24	MR. BUTNER: She may be excused.
10:37:49	25	THE COURT: Not subject to recall?

10:37:50	1	MR. BUTNER: Not subject to recall.
10:37:51	2	THE COURT: Mr. Sears?
10:37:52	3	MR. SEARS: No recall from us either, your Honor.
10:37:54	4	Thank you.
10:37:54	5	THE COURT: You are excused from your subpoena.
10:37:57	6	You may step down. You need not come back. If you wish
10:38:00	7	to come and watch the trial, you may since you have
10:38:02	8	already testified.
10:38:03	9	THE WITNESS: Thank you.
10:38:04	10	THE COURT: Thank you.
10:38:18	11	Mr. Butner, do you have another witness
10:38:19	12	ready?
10:38:20	13	MR. BUTNER: I do. Mr. Drake. Ron Drake,
10:38:23	14	please.
10:38:32	15	THE COURT: Ron?
10:38:33	16	MR. BUTNER: Ron.
10:38:49	17	THE BAILIFF: Raise your right hand for the
10:38:51	18	clerk.
10:38:53	19	RONALD W. DRAKE
10:39:01	20	called, sworn, and testified as follows:
10:39:01	21	THE BAILIFF: Right up here. Careful of the
10:39:04	22	steps and just have a seat.
10:39:06	23	DIRECT EXAMINATION
10:39:07	24	MR. BUTNER: Thank you.
10:39:07	25	Q Please tell us your name for the record,

10:39:16	1	Mr. Drak	e.
10:39:16	2	A	Ronald Wallace Drake.
10:39:19	3	Q	And where do you presently reside?
10:39:23	4	A	7405 North Bridle Path, Prescott, Arizona.
10:39:28	5	Q	How long have you lived out there on North Bridle
10:39:31	6	Path?	
10:39:31	7	A	Since 1977.
10:39:33	8	Q	And what is your current occupation?
10:39:40	9	A	I am retired.
10:39:41	10	Q	Retired from Yavapai County?
10:39:43	11	A	That's correct.
10:39:44	12	Q	What did you do for Yavapai County?
10:39:48	13	A	I ran the heavy equipment shop for the Public
10:39:52	14	Works De	partment.
10:39:53	15	Q	And how long have you been retired?
10:39:58	16	A	Since August 22nd, last year.
10:40:02	17	Q	August 22nd of 2009?
10:40:08	18	A	That's correct.
10:40:08	19	Q	Okay. So you were residing at 7405 North Bridle
10:40:14	20	Path on	July the 2nd of the year 2008?
10:40:18	21	A	That's correct.
10:40:18	22	Q	And do you have any hobbies or avocations,
10:40:28	23	Mr. Drak	e?
10:40:28	24	A	Yeah. I am kind of into cars.
10:40:31	25	Q	Okay. In fact, you have a few cars in your yard?
			·

1 10:40:34 0:40:35 10:40:42 3 10:40:46 5 10:40:50 10:40:55 7 10:40:59 10:41:04 9 10:41:06 10:41:06 10 10:41:07 11 10:41:18 12 10:41:19 13 0:41:23 14 15 10:41:26 16 10:41:29 17 10:41:34 18 10:41:34 19 10:41:39 20 10:41:42 10:41:49 21 22 10:41:51 23 10:41:55 24 10:42:03

10:42:06

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- A Yes, I do.
- Q We saw a photograph where there were a few cars depicted on the edge of the photographs, so to speak. Where is your residence located in relation to the residence that was formerly occupied by Carol Kennedy?
 - A It's on the south side or south lot.
- Q And is it just immediately to the south? In other words, you share a property line with that residence?
 - A That's correct. Yes.
- Q On the evening of July the 2nd of the year 2008, were you home at your residence?
 - A I was. I was working in my garage.
 - **Q** What were you doing in your garage?
 - A I was welding and playing with cars.
- **Q** Do you remember what kind of welding you were doing?
- A Gas welding actually. I was kind of restoring an old truck.
- **Q** And while you were welding, approximately what time was this when you were welding if you can recall?
- A I -- I really don't know. It was after work or after -- it was in the evening, not terribly late, but I don't know. I don't have a clock in my garage or no way to tell you.

10:42:07	1	Q And was it was it getting dark during the time
10:42:14	2	that you were welding?
10:42:15	3	A Not not immediately, no.
10:42:18	4	Q But it was after work?
10:42:22	5	A Yeah.
10:42:22	6	Q Okay. What time did you get off work back in
10:42:25	7	those days?
10:42:26	8	A I'm sorry to say. I don't I don't know if it
10:42:33	9	was three o'clock or 5:30. They changed my hours around
10:42:37	10	so, I believe it was 5:30, but
10:42:40	11	Q So you think it was sometime after 5:30?
10:42:43	12	A Probably, yes.
10:42:44	13	Q And while you were welding, did you take any
10:42:52	14	breaks?
10:42:52	15	A Yes, I did. I was cooling some metal outside the
10:42:56	16	garage and I stepped outside.
10:42:58	17	Q Okay. And when you step outside your garage,
10:43:05	18	where are you located on your property so to speak?
10:43:08	19	A Well, my garage faces the east which would be the
10:43:13	20	ranch land, so I stepped out on that side of the garage.
10:43:18	21	Q When you say the ranch land, that land, that open
10:43:23	22	space that is located behind your house?
10:43:25	23	A That's correct.
10:43:26	24	Q Is there a fence across the back of your
10:43:29	25	property?

10:43:29	1	A Yes, there is.
10:43:30	2	Q Does that fence continue onto the same property
10:43:34	3	that was occupied by Carol Kennedy back on July 2nd of
10:43:38	4	2008?
10:43:39	5	A I believe I don't know if it's a barb wire
10:43:43	6	fence, but there is a ranch fence. But I have a field
10:43:46	7	wire fence.
10:43:47	8	Q And a field wire fence, is that fencing basically
10:43:55	9	that is wire with large squares so to speak?
10:43:58	10	A Yeah.
10:43:59	11	Q And so you stepped out of your garage on the east
10:44:05	12	side of your garage?
10:44:06	13	A Uh-huh.
10:44:07	14	Q Is that yes?
10:44:08	15	A That's correct.
10:44:08	16	$oldsymbol{Q}$ Okay. And that's the side that kind of backs out
10:44:12	17	towards the open range land?
10:44:14	18	A That's correct.
10:44:14	19	Q And what were you doing out there when you took a
10:44:18	20	break?
10:44:18	21	A I just was dunking some hot metal into some water
10:44:23	22	to cool it off.
10:44:24	23	$oldsymbol{Q}$ And at that point in time when you were out
10:44:30	24	there, did you take note of anything unusual?

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10:44:33

A Well, I -- I heard a cough coming from the

1 residence next door. Carol's house. And I just noticed 10:44:39 10:44:45 2 it because I just didn't really notice or know that 10:44:47 anybody was home. 10:44:48 0 Okay. And this cough that you heard, could you tell from whom it came? 5 10:44:53 10:44:57 Not really, but it was -- I -- it was like a A 7 productive cough, if you know what a doctor asks you, and 10:45:01 That's what... 10:45:06 8 a male. 9 A deeper sound --10:45:09 Q 10 A Deeper sound. 10:45:10 10:45:10 11 -- indicating to you a male? Q 10:45:12 12 That is what I presumed at the time. And you don't know exactly what time this 13 10:45:14 Q occurred, I assume? 10:45:23 14 10:45:24 15 A No, I do not. Sometime before dark? 10:45:26 16 Q 10:45:27 17 A That's correct. And sometime after 5:30? 18 10:45:28 Q 19 A Yes. 10:45:32 10:45:33 20 Q Okay. 10:45:34 21 A I would say so, yes. 22 And beyond that you're not really certain? 10:45:36 0 23 Not at all. A 10:45:38 Okay. Were you able to see anybody about the 24 10:45:39

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10:45:43

residence there, so to speak, at the Carol Kennedy

1 residence? 10:45:46 10:45:46 No, not at all. I -- it was definitely light 10:45:49 enough. That is, I can tell you that. But, no, I didn't 10:45:52 see anyone. I just -- and it wouldn't have been, you know -- it wasn't abnormal. I just didn't know anybody 10:45:55 5 That's all. 10:46:00 6 was there. Right. You just took note of it because you 10:46:01 Q didn't think anybody was home? 10:46:03 - 8 9 A Exactly. 10:46:04 And after hearing that cough, did you do 10:46:05 10 Q 10:46:12 11 anything? 12 I went back inside. Started working again. 10:46:12 A 10:46:16 13 And how long did you work? There again I really can't tell you. I don't 10:46:24 14 A know, but it was, oh, towards dark, I mean. 10:46:26 15 So you worked a while and it was getting towards 10:46:31 16 Q 10:46:34 17 dark? 18 A Yes, it was. 10:46:34 And what did you do at that point? 10:46:35 19 Q I was welding again and I stepped outside, and I 10:46:38 20 A thought I heard a male voice like a -- very faintly, but 10:46:44 21 like a part of a conversation, but just so brief, I 22 10:46:54 23 couldn't say -- no words, no -- nothing. 10:46:58 Couldn't understand any words? 24 Q 10:47:02

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10:47:04

A

No.

10:47:04	1	Q But you're certain it was a male voice?
:47:08	2	A Relatively.
10:47:10	3	Q Okay. And where did that come from?
10:47:14	4	A It came from the ranch land on the east side.
10:47:18	5	Q And did it come from the ranch land due east of
10:47:24	6	where you were located or more in a northerly direction?
10:47:27	7	A More northern northern, east direction.
10:47:30	8	Q Did you recognize the voice?
10:47:37	9	A No. It was so brief and it was, ah, just a sound
10:47:44	10	I presume to be a voice.
10:47:46	11	Q And again what was it that caused you to take
10:47:50	12	note of that particular sound?
10:47:53	13	A Ah, just you know, it's very quiet outside, so
:47:59	14	noises are something you notice.
10:48:02	15	Q And did you hear anything further?
10:48:08	16	A No.
10:48:09	17	Q Did you take any action as a result of hearing
10:48:13	18	that sound?
10:48:13	19	A No. It wouldn't be uncommon to have people
10:48:18	20	walking or in the back on the ranch land.
10:48:22	21	Q Did you see anybody go by your residence?
10:48:36	22	A No, I did not.
10:48:37	23	Q Did you see anybody up at the Kennedy residence?
10:48:40	24	A No, I did not.
10:48:41	25	Q At some point in time, did you report this

10:48:49 1 0:48:51 2 10:48:54 3 10:48:58 10:49:05 5 10:49:11 6 10:49:14 7 10:49:18 8 10:49:22 10:49:25 10 10:49:29 11 10:49:32 12 13 10:49:35 0:49:36 14 10:49:43 15 10:49:46 16 10:49:55 17 18 10:49:56 19 10:49:59 10:49:59 2.0 10:50:00 21 22 10:50:03 23 10:50:04 24 10:50:07

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10:50:09

information to the Yavapai County Sheriff's office?

A We -- we were woke up around 10 o'clock or after 10 o'clock. Deputies had said there was an accident next door. Ah, they wanted to know if we had seen anything, anybody. Ah, I -- ah, I didn't remember anything at the time, but I went back to bed. Couldn't sleep.

Ah, I called the deputy. I remembered that -- the two incidents of the voices and the cough. I called the deputy that had given me his card and they came back over and we talked, and I discussed and told them about what I had heard.

Q Okay. Did you give him any other information about your neighborhood there?

A Oh, I told them that -- the, ah, Glenshandra I believe is the road that is just the next subdivision over, that is just right -- right there. Accessible through the back.

Q And you explained that it ran into the open range land?

- A Yes, I did.
- Q Butted up against it so to speak.
- A That it was close. Very close.
- Q Suggested they go take a look over there?
- A I didn't really know at the time what was going on, but I just told them that much. I --

10:50:12	1	Q	So the deputies had indicated to you that there
50:17	2	had been	an accident next door?
10:50:18	3	A	Well, it was that's what they said, but it was
10:50:22	4	obvious	that was not the case.
10:50:25	5	Q	Why do you say it was obvious that it was not the
10:50:31	6	case?	
10:50:31	7	A	Well, because they were asking too much
10:50:34	8	question	s. Did I see anybody. Did, ah it just didn't
10:50:41	9	sound st	raight.
10:50:42	10	Q	Sounded too serious to be an accident?
10:50:44	11	A	Oh, absolutely.
10:50:46	12	Q	Thank you.
10:51:01	13		Yeah. You had lived there at that point in
0:51:05	14	time, st	ill, a considerable amount of time. You moved
10:51:09	15	there in	'77?
10:51:11	16	A	That's correct.
10:51:11	17	Q	So you have been there not good at math.
10:51:15	18	A	Me, either.
10:51:16	19	Q	21 years about?
	20		JUROR: 31.
10:51:21	21		MR. BUTNER:
10:51:21	22	Q	31 years. Thank you. 31 years. Oh, boy.
10:51:29	23		Did you know Carol Kennedy?
10:51:31	24	A	Yes.
10:51:32	25	Q	Okay. And did you know Steven Democker?

10:51:35				
A Ah, I don't recall when they moved in, but when they moved in, we were introduced and I guess from then. Q And were you friends with Carol Kennedy? A Oh, on a neighborly basis, yes. Q Was she a good neighbor? A Yes. Q Did she have any wild parties at her house or anything? A No. Disscile 10 anything? A Not that I knew anything about. Construct A Yes. Q Was it pretty quiet over there? A Yes. Q In fact, was it so quiet, that's why you took note of those unusual sounds? A Yes. A Yes. CROSS-EXAMINATION MR. SEARS: Thank you. Mr. Drake, my name is John Sears. I am one of	10:51:35	1	A	Yes.
they moved in, we were introduced and I guess from then. Q And were you friends with Carol Kennedy? A Oh, on a neighborly basis, yes. Q Was she a good neighbor? A Yes. Did she have any wild parties at her house or anything? A No. Did she have a bunch of guys coming and going? A Not that I knew anything about. Disc:21 13 A Not that I knew anything about. Was it pretty quiet over there? A Yes. Q In fact, was it so quiet, that's why you took note of those unusual sounds? A Yes. MR. BUTNER: I don't have any further questions, sir. Thank you very much. THE COURT: Mr. Sears. CROSS-EXAMINATION MR. SEARS: Thank you. Q Mr. Drake, my name is John Sears. I am one of	0:51:35	2	Q	So you had known them for how long?
Q And were you friends with Carol Kennedy? 10:52:02 6 A Oh, on a neighborly basis, yes. 10:52:07 7 Q Was she a good neighbor? 10:52:09 8 Yes. 10:52:10 9 Q Did she have any wild parties at her house or anything? 10:52:16 10 A No. 10:52:16 12 Q Did she have a bunch of guys coming and going? 10:52:21 13 A Not that I knew anything about. 10:52:23 14 Q Was it pretty quiet over there? 10:52:25 15 A Yes. 10:52:25 16 Q In fact, was it so quiet, that's why you took note of those unusual sounds? 10:52:37 20 MR. BUTNER: I don't have any further questions, sir. Thank you very much. 10:52:47 24 Q Mr. Drake, my name is John Sears. I am one of	10:51:40	3	A	Ah, I don't recall when they moved in, but when
A Oh, on a neighborly basis, yes. 10:52:07 7 Q Was she a good neighbor? 10:52:10 9 Q Did she have any wild parties at her house or anything? 10:52:16 10 A No. 10:52:16 12 Q Did she have a bunch of guys coming and going? 10:52:21 13 A Not that I knew anything about. 10:52:23 14 Q Was it pretty quiet over there? 10:52:25 15 A Yes. 10:52:25 16 Q In fact, was it so quiet, that's why you took note of those unusual sounds? 10:52:30 18 A Yes. 10:52:37 20 MR. BUTNER: I don't have any further questions, sir. Thank you very much. 10:52:47 23 MR. SEARS: Thank you. 10:52:47 24 Q Mr. Drake, my name is John Sears. I am one of	10:51:44	4	they mov	ed in, we were introduced and I guess from then.
Q	10:51:49	5	Q	And were you friends with Carol Kennedy?
A Yes. Q Did she have any wild parties at her house or anything? A No.	10:52:02	6	A	Oh, on a neighborly basis, yes.
Q	10:52:07	7	Q	Was she a good neighbor?
10:52:16 10 10:52:16 11 A No. 10:52:16 12 Q Did she have a bunch of guys coming and going? 10:52:21 13 A Not that I knew anything about. Q Was it pretty quiet over there? 10:52:23 14 A Yes. Q In fact, was it so quiet, that's why you took note of those unusual sounds? A Yes. 10:52:28 17 10:52:30 18 A Yes. MR. BUTNER: I don't have any further questions, sir. Thank you very much. 10:52:45 21 CROSS-EXAMINATION MR. SEARS: Thank you. MR. SEARS: Thank you. Q Mr. Drake, my name is John Sears. I am one of	10:52:09	8	A	Yes.
10:52:16 11 10:52:16 12 Q Did she have a bunch of guys coming and going? 10:52:21 13 A Not that I knew anything about. Q Was it pretty quiet over there? 10:52:25 15 A Yes. 10:52:25 16 Q In fact, was it so quiet, that's why you took 10:52:26 17 10:52:30 18 A Yes. MR. BUTNER: I don't have any further questions, 10:52:37 20 Sir. Thank you very much. 10:52:47 23 MR. SEARS: Thank you. Q Mr. Drake, my name is John Sears. I am one of	10:52:10	9	Q	Did she have any wild parties at her house or
Did she have a bunch of guys coming and going? A Not that I knew anything about. Q Was it pretty quiet over there? A Yes. O:52:25 15 A Yes. O In fact, was it so quiet, that's why you took note of those unusual sounds? A Yes. MR. BUTNER: I don't have any further questions, sir. Thank you very much. THE COURT: Mr. Sears. CROSS-EXAMINATION MR. SEARS: Thank you. MR. Drake, my name is John Sears. I am one of	10:52:16	10	anything	?
10:52:21 13 A Not that I knew anything about. Q Was it pretty quiet over there? 10:52:25 15 A Yes. 10:52:25 16 Q In fact, was it so quiet, that's why you took 10:52:28 17 10:52:30 18 A Yes. 10:52:35 19 MR. BUTNER: I don't have any further questions, 10:52:37 20 Sir. Thank you very much. 10:52:45 21 CROSS-EXAMINATION 10:52:47 23 MR. SEARS: Thank you. Q Mr. Drake, my name is John Sears. I am one of	10:52:16	11	A	No.
### Page 19:52:23	10:52:16	12	Q	Did she have a bunch of guys coming and going?
10:52:25	10:52:21	13	A	Not that I knew anything about.
10:52:25 16	10:52:23	14	Q	Was it pretty quiet over there?
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10:52:30 18 A Yes. 10:52:35 19 MR. BUTNER: I don't have any further questions, 10:52:37 20 sir. Thank you very much. 10:52:45 21 THE COURT: Mr. Sears. 22 CROSS-EXAMINATION 10:52:47 23 MR. SEARS: Thank you. 10:52:47 24 Q Mr. Drake, my name is John Sears. I am one of	10:52:25	16	Q	In fact, was it so quiet, that's why you took
MR. BUTNER: I don't have any further questions, 10:52:37 20 sir. Thank you very much. 10:52:45 21 THE COURT: Mr. Sears. CROSS-EXAMINATION MR. SEARS: Thank you. 10:52:47 24 Q Mr. Drake, my name is John Sears. I am one of	10:52:28	17	note of	those unusual sounds?
10:52:37 20 sir. Thank you very much. 10:52:45 21 THE COURT: Mr. Sears. CROSS-EXAMINATION MR. SEARS: Thank you. 10:52:47 23 Mr. Drake, my name is John Sears. I am one of	10:52:30	18	A	Yes.
THE COURT: Mr. Sears. CROSS-EXAMINATION MR. SEARS: Thank you. O:52:47 24 Q Mr. Drake, my name is John Sears. I am one of	10:52:35	19		MR. BUTNER: I don't have any further questions,
CROSS-EXAMINATION MR. SEARS: Thank you. 10:52:47 24 Q Mr. Drake, my name is John Sears. I am one of	10:52:37	20	sir. Th	ank you very much.
MR. SEARS: Thank you. 10:52:47 24 Q Mr. Drake, my name is John Sears. I am one of	10:52:45	21		THE COURT: Mr. Sears.
10:52:47 24 Q Mr. Drake, my name is John Sears. I am one of		22		CROSS-EXAMINATION
	10:52:47	23		MR. SEARS: Thank you.
10:52:50 25 the lawyers that represents Steve Democker whom you know	10:52:47	24	Q	Mr. Drake, my name is John Sears. I am one of
	10:52:50	25	the lawy	ers that represents Steve Democker whom you know

10:52:53 1 who is here with me. 0:52:54 Phil, if you can turn the Elmo on for a 10:52:59 3 second. Thank you. As soon as we get the projector fired up, 10:53:00 Mr. Drake, I am going to show you a couple overheads here. 5 10:53:12 See if we can figure out where this is at. 10:53:16 6 10:53:23 7 Let me show you 2339 in evidence, sir. Probably easiest way to look at this is 2339. Do you 8 10:53:30 9 recognize North Bridle Path and then this 90 degree turn 10:53:36 10:53:39 10 here? Yes, I do. 10:53:39 11 Α And we have somewhere a laser pointer. 10:53:40 12 Q 13 THE COURT: It's right behind the witness. Up on 10:53:44 0:53:48 14 the bench. Thank you. 15 MR. SEARS: Thank you. 10:53:48 If I could borrow that for a second, Mr. Drake, 16 Q 10:53:49 10:53:52 17 and -- thank you, sir. 18 Okay. This is your residence here, correct? 10:53:54 That's correct. 10:54:00 19 A And this is Carol Kennedy's home, and her 20 10:54:00 10:54:05 21 guesthouse and garage? That's correct. 22 A 10:54:05 Which is right next to the boundary between your 23 10:54:06 two properties, correct?

That's correct.

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A

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10:54:10	1
10:54:12	2
10:54:17	3
10:54:21	4
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10:54:46	14
10:54:47	15
10:54:48	16
10:54:49	17
10:54:54	18
10:54:59	19
10:55:02	20
10:55:03	21
10:55:04	22
10:55:07	23
10:55:10	24

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10:55:18

- **Q** And if I understand what you are saying is on the night of July 2nd, you were in the north end of your residence in your shop welding some metal, right?
 - A That's correct.
- **Q** Am I pointing to the end of the house that's up in this corner?
- A Yeah. My door is actually more midway. More on the south -- south direction, but not at the very end.
- Q Okay. And you said that you stepped out of the shop because you had some metal cooling. It was a pretty hot night. Do you remember that?
 - A Probably.
 - **Q** Early July?
 - A Yeah.
 - Q Just before the rains?
 - A Yeah.
- Q Okay. And if I understand what you said is that you heard a cough and that you think that this cough was a productive cough and it was deep enough that it was probably a male coughing; is that right?
 - A That's correct.
- Q Okay. And could you tell from your location right outside your shop where that cough was coming from?
- A Well, the -- there's sort of a green lawn and it sounded like it was coming from the lawn or towards the

10:55:22 0:55:25 10:55:26 10:55:29 10:55:31 10:55:33 10:55:35 10:55:37 10:55:39 10:55:40 10:55:44 10:55:48 10:55:52 10:55:54 10:55:55 10:55:59 10:56:02 10:56:08 10:56:13 10:56:14

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back of the regular house. Not the guesthouse, but...

- **Q** This area in here?
- A Yeah. But maybe -- maybe towards Bridle Path a little bit. That's the best...
 - Q Right here?
 - A That's the best I could say.
 - Q Did you look over to see?
 - A Yeah, I did. I didn't see anybody.
 - Q Couldn't see anybody.

The reason I ask is that you were contacted by a sheriff's deputy, the one that apparently woke you up, Deputy Traintor, and I understand that at first you -- your first thought was that maybe something had happened to your son.

A That's correct. He wasn't home at the time and my wife had a bad experience with her father. The deputies notified her mother that her -- her father had been in an accident and so we, just being woke up, presumed the worst I guess.

- Q Is that your son Zach?
- A Yes, it is.
- Q I know Zach.
- A I know you know Zach.
- Q And so you were greatly relieved -- you and your wife were gravely relieved that it wasn't about Zach?

10:56:24	1	A	Absolutely. Absolutely.
20:56:26	2	Q	But then it was pretty clear that you were being
10:56:28	3	asked a	lot of different questions and even though you
10:56:32	4	were tol	d it was an accident, that maybe it wasn't. Maybe
10:56:34	5	it was s	omething else, right?
10:56:35	6	A	That's exactly the way it went down.
10:56:37	7	Q	And where did that conversation take place at
10:56:39	8	your hou	se?
10:56:40	9	A	It took place in the well, in the driveway.
10:56:45	10	They wal	ked up the driveway and towards the south end of
10:56:50	11	my house	•
10:56:52	12	Q	This end down here?
10:56:53	13	A	It would be the southwest side, yes.
10:56:55	14	Q	That would be this corner here?
10:56:57	15	A	Yes.
10:56:57	16	Q	Okay. And you came to the door there?
10:56:59	17	A	Yes.
10:57:00	18	Q	Do you remember how many police officers there
10:57:04	19	were?	
10:57:04	20	A	At least two and maybe three.
10:57:07	21	Q	Okay. Not something that happens every night?
10:57:08	22	Police d	on't come to your door at ten o'clock at night
10:57:11	23	very fre	quently?
10:57:12	24	A	No.
10:57:12	25	Q	So it's something you remember pretty clearly; is

1 that right? 10:57:15 0:57:15 Well, out of the blue, yeah. 10:57:17 Q Have you ever been shown a police report or been 10:57:20 told what the police reported you to have said to them at 5 first? 10:57:24 10:57:24 6 A No. 7 The police officer whose name was Taintor wrote a 10:57:25 report that said --10:57:31 8 9 MR. BUTNER: Objection. Hearsay. 10:57:33 I am not offering it for the truth, 10:57:36 10 MR. SEARS: 10:57:38 11 your Honor. Just reporting what the officer said. 12 MR. BUTNER: I think he is. 10:57:39 13 THE COURT: Sustained. 10:57:41 0:57:44 14 MR. SEARS: I can rephrase. 15 THE COURT: Rephrase the question. 10:57:46 10:57:47 16 MR. SEARS: Did you tell Deputy Traintor that between 7:30 10:57:47 17 Q and eight o'clock, you heard whom you believed to be Carol 10:57:50 18 Kennedy talking? 10:57:54 19 10:57:57 20 A No. Did you tell Deputy Traintor that you said it 10:57:57 21 Q sounded to you to be a one sided conversation and that you 22 10:58:00 23 thought Carol was possibly on the phone? 10:58:04 I did say it sounded like a possible one-sided 24 10:58:07 conversation, but I don't believe that it was a woman. 25 10:58:10

1 10:58:14 0:58:16 2 10:58:18 10:58:23 5 10:58:24 10:58:25 6 10:58:29 7 10:58:33 9 10:58:36 10 10:58:39 10:58:43 11 10:58:44 12 13 10:58:45 0:58:49 14 15 10:58:55 16 10:58:57 17 10:59:02 18 10:59:06 19 10:59:07 10:59:09 20 10:59:09 21 22 10:59:10 23 10:59:14 24 10:59:17 25 10:59:20

- Q So you were talking about, if I understand what you are saying, you were talking about this voice you heard that you thought was coming from the open land to the east of your house, right?
 - A That's correct.
- Q Okay. And apparently the deputy thought that you were talking about hearing Carol talk?
- A I can't tell you. I was also interviewed by another detective, so I don't know -- I don't think my stories changed, but -- as far as I can tell.
 - Q Possibly misunderstood you?
 - A I would think so.
- Q Okay. If I understand what you're saying is about 30 minutes later or so, you called the number on the card that you were left. Why did you do that?
- A They asked if I remembered anything, to let them know. So going back over the previous evening, that's what I remembered.
- Q Okay. Well, this would have been the same night, right?
 - A That is right.
- **Q** Okay. And what did you remember that you hadn't told the officers?
- A Well, it was actually the coughing incident and the voice incident. I didn't tell them that initially.

1 10:59:24 0:59:26 10:59:28 10:59:29 5 10:59:32 10:59:35 6 10:59:36 7 8 10:59:39 9 10:59:41 10:59:42 10 10:59:44 11 10:59:48 12 10:59:55 13 0:59:56 14 15 11:00:00 11:00:06 16 11:00:21 17 18 11:00:24 11:00:26 19 11:00:27 20 11:00:30 21 22 11:00:33 23 11:00:37 24 11:00:37

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11:00:42

That's just the way it went down.

- Q Okay.
- A That is why I called back.
- Q Okay. And so then you told them that you heard this cough that you told us about, right, and then a single male voice.

Did the cough, the sound of the cough and the voice come from the same place?

- A No.
- Q Okay. So the cough -- you were talking about the cough being somewhere you thought in this green lawn area just south of the main part of Carol Kennedy house, right?
 - A Best I could...
- Q Okay. And I think we have a slightly better picture here that will show the open area. Let me show you 2337. See if this -- here's 2337, and it's a little blurry, but here's Bridle Path and here's the turn. Here's Carol. Here is your house.
 - A Okay.
- Q I think we sort of see the fence line that runs along behind your house, behind Carol's house, and keeps on going over here to Glenshandra, right?
 - A Right.
- Q Okay. Where did you think you heard the male voice? The faint male voice? Where was that coming from?

11:00:46	1
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11:01:37	22
11:01:39	23
11:01:42	24
	0.5

11:01:44 25

- A Well, from -- from -- yeah. That -- in the east, northeast.
- **Q** Somewhere on the other side of the fence on this open land here?
 - A That would be my guess at the time, yes.
- **Q** All right. Can you say here today under oath that it was Steve Democker's voice?
 - A No.
- Q Can you say here under oath that you heard Steve Democker cough?
 - A No.
- Q Can you say here though under oath that that night you didn't see Steve Democker at Carol's house?
 - A I did not.
- Q Okay. Were you paying attention if a car had driven up or multiple cars had driven up to Carol's driveway that night, would you have taken notice of them?
- A If I had been outside, but I was on the opposite side of where those -- those cars would have driven in, so I would not have seen any cars.
- **Q** Do you remember about what time you went to bed that night if you were at sleep at ten?
 - A Probably nine o'clock. That would be normal.
- Q If I told you that the evidence so far is that the first police officer got on scene, which happens to be

the same officer that came to your door, a little bit 11:01:49 1 11:01:52 2 before nine and drove up and was walking around, did you see that officer? 11:01:58 11:01:59 A No. 11:02:00 5 Okay. After you were awakened though, did you Q look over and see now there were lots of police cars over 11:02:03 6 11:02:05 at Carol's? 11:02:06 8 A Absolutely. Do you remember seeing any flashing lights? 11:02:07 Q 11:02:09 10 A All night long. 11:02:10 11 Q All night long. Okay. And so that was a very long night for you 11:02:12 12 13 and your wife I imagine. 11:02:14 1:02:15 14 A Yes, it was. Do you remember talking on the telephone just 11:02:16 15 this week to Mr. Robertson, one of my investigators in 11:02:22 16 17 this case? 11:02:26 Yes, I do. 11:02:26 18 Α And -- thank you for taking his call. 11:02:27 19 Q You told Mr. Robertson that it wasn't 11:02:32 20 unusual, excuse me, for you to hear people talking in the 11:02:41 21 area just east of your house on the open land. 22 11:02:46 23 wasn't a particularly unusual circumstance, right? 11:02:49 24 No. 11:02:52 A

11:02:52

25

Q

This was an area that you have lived there now 33

11:02:56 years. This open area is a place that people frequently 1 1:03:00 2 use for recreation, correct? 11:03:01 Yes. 11:03:02 Q And on quiet summer nights you could hear people back on that land? 11:03:05 5 6 A Yes. 11:03:06 And people use that for horseback riding? 11:03:06 7 Q 11:03:10 A Yes. 9 For hiking? 11:03:10 Q 11:03:11 10 A Yes. 11 Q Have you ever seen people ride bicycles on the 11:03:11 open land? 11:03:14 12 Not terribly often, but I have seen -- I have 13 11:03:15 A 1:03:18 seen tracks. I have walked out myself. 14 In the area just east of your house; is that 15 11:03:21 Q 11:03:24 16 right? 17 Actually I always went the other way towards the 11:03:24 A more open area. 11:03:29 18 19 Do you know where the pipeline trail is? 11:03:30 11:03:32 20 A Yes. Okay. Let me show you 2341. This may be a 11:03:32 21 Q little hard to see on the projector here, Mr. Drake, but 22 11:03:40 this is a map -- let me see if I can zoom in without 23 11:03:44 24 blurring it. 11:03:59 You can see we put Williamson Valley Road in 25 11:03:59

11:04:11 5 11:04:13 11:04:14 6 7 11:04:18 11:04:22 9 11:04:25 11:04:28 10 11:04:30 11 11:04:33 12 13 11:04:34 1:04:36 14 15 11:04:39 11:04:41 16 11:04:41 17 18 11:04:42 19 11:04:44 11:04:45 20 11:04:47 21 22 11:04:48 23 11:04:48 24 11:04:51 25 11:04:55

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yellow. Okay. And here's Bridle Path. North is more or less up. Here is Bridle Path coming down and here is where it makes a turn. So Carol's house is there and your house is about there, correct?

A Okay. Yes.

And my understanding is that the power line trail is actually a trailhead now off -- you go down off of O'Neal and this is Bailey down here and down in this area there is actually an organized trailhead with a sign that says pipeline trail. Have you ever been there?

A Actually I walked that trail a couple months ago.

About a month ago.

Q There's actually a natural gas pipeline that goes across the deep well that's pretty obvious. Once you get up on the high ground, you can see it takes off into distance, right?

A Yes.

Q And there is lots and lots of trails that cut across this area?

A Yes.

Q Heading up towards your home, right?

A Yes.

Q And so you say typically you tend to walk out of your property and back down towards the south, correct?

A Yeah. Or more east. Easterly.

11:04:57	1	Q	Some of the trails are jeep roads that you can
1:05:00	2	drive a	vehicle on, right?
11:05:02	3	A	Yes.
11:05:02	4	Q	And there are also cow tracks that
11:05:05	5	A	Yes.
11:05:06	6	Q	appear to be cow tracks, right?
11:05:08	7	A	Trails.
11:05:09	8	Q	They just crisscross this area?
11:05:10	9	A	Right.
11:05:11	10	Q	Do you have a gate out of the back of your house
11:05:15	11	through o	on the fence?
11:05:16	12	A	Yes.
11:05:16	13	Q	And so that is how you would go in and out of the
1:05:19	14	open land	1?
11:05:20	15	A	Right.
11:05:20	16	Q	You wouldn't go up to Glenshandra and go through
11:05:23	17	the gate	there?
11:05:23	18	A	No. No.
11:05:24	19	Q	Do you have a way to get through the locked gate
11:05:27	20	on Glens	nandra? Do you have a
11:05:28	21	A	No.
11:05:28	22	Q	combination or a key?
11:05:29	23	A	I didn't even know there was a gate there until
11:05:32	24	recently	•

11:05:33 25

Q And you wouldn't need to because you can access

1 the land right off your property, correct? 11:05:36 1:05:37 Α Yes. I don't have any questions of Mr. Drake. 11:05:38 3 Q you, sir. 11:05:41 4 5 Α 11:05:42 Thank you. THE COURT: Well --11:05:43 6 7 THE BAILIFF: Not yet. 11:05:43 THE COURT: But wait. There's more. 11:05:45 8 9 Mr. Butner. 11:05:47 11:05:51 10 MR. BUTNER: Mr. Sears, could I have exhibit 11:05:54 11 2337. Thank you, sir. 12 THE COURT: Just so you know, there's redirect by 11:06:00 Mr. Butner and possibly some questions from the jurors. 11:06:02 13 1:06:05 THE WITNESS: Okay. I'll stick around. 14 15 THE COURT: Thank you. 11:06:07 THE BAILIFF: You can start on them. 11:06:09 16 11:06:11 17 THE COURT: Which I may start. REDIRECT EXAMINATION 11:06:13 18 11:06:13 19 MR. BUTNER: Okay. Mr. Drake, let me show you again what's --11:06:13 20 I believe this is Exhibit 2339, and do you have -- yes. 11:06:25 21 22 Would you take the laser. 11:06:32 23 I suppose we can start with the one 11:06:33 THE COURT: jury question right now. On presenting maps, can we view 24 11:06:35

them with north up. Sometimes it's east up and sometimes

11:06:40

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11:06:43 1 it's north up, west up. 1:06:45 MR. BUTNER: That's a good idea. 11:06:48 3 THE COURT: So starting now, I would ask the 11:06:51 4 lawyers if they can to try to do that. 11:06:57 5 MR. BUTNER: All right. 11:06:59 6 THE COURT: Thank you. 11:06:59 7 MR. BUTNER: Thank you. Okay. Mr. Drake, do you recognize what is 8 11:07:00 Q depicted in 2339, sir? 11:07:04 11:07:06 10 A Yes. Okay. There's the laser pointer right there. 11:07:06 11 Would you activate the laser pointer please and point to 11:07:10 12 the area, first of all, where you believe you heard the 11:07:15 13 cough come from? 1:07:18 14 15 In this area right here. 11:07:20 Okay. So when you were talking about the grassy 11:07:24 16 area, were you talking about the grassy area between the 11:07:27 17 18 questhouse and the main house? 11:07:29 I believe this is like a grassy area right here. 11:07:31 19 A Okay. And then after hearing that, of course 11:07:34 20 11:07:40 21 then you went back to work? 22 Yes. 11:07:41 A 23 Welding in your shop and then took a break again 11:07:42 Q closer to dark at this point in time? 24 11:07:46

11:07:48

25

A

Yes.

11:07:49	1	Q	And where was it that you heard the male voice
11:07:53	2	come fro	m if you can tell?
11:07:54	3	A	Ah, here.
11:08:00	4	Q	Right out in there. So it was off to the
11:08:03	5	northeas	t from where you were at?
11:08:05	6	A	That's correct.
11:08:06	7	Q	And it looks like it was basically directly
11:08:10	8	behind t	he house on Bridle Path that was occupied by Carol
11:08:15	9	Kennedy	at that point in time?
11:08:17	10	A	That's what I presumed.
11:08:19	11	Q	Would you point to that again, where you think
11:08:22	12	you hear	d it coming from?
11:08:23	13	A	In this area here.
11:08:25	14	Q	Are there trails back in that area?
11:08:28	15	A	Ah, yeah.
11:08:30	16	Q	And have you ever walked the trails back in that
11:08:35	17	area?	
11:08:35	18	A	Not until recently.
11:08:37	19	Q	Okay.
11:08:38	20	A	But yes.
11:08:39	21	Q	Recently have you walked the trails in that area
11:08:42	22	all the	way up to Glenshandra?
11:08:43	23	A	I did.
11:08:44	24	Q	Approximately how far from that area is it to the
11:08:48	25	Glenshan	dra trailhead, if you can recall or know?

11:08:51	1	A Well, it's a very
1:08:57	2	Q Okay. Now, if I
11:09:03	3	just a moment.
11:09:05	4	That night y
11:09:09	5	cars parked out front of t
11:09:13	6	the north of yours, right?
11:09:14	7	A That's correct.
11:09:14	8	Q Were you aware of
11:09:23	9	over at the Bridle Path re
11:09:25	10	A Yeah. Somewhat.
11:09:29	11	there. But, yes, I knew t
11:09:31	12	went and yes.
11:09:33	13	$oldsymbol{Q}$ Okay. And that v
11:09:37	14	you recall where it parked
11:09:39	15	there?
11:09:41	16	MR. SEARS: Your
11:09:43	17	of cross. New matter.
11:09:47	18	THE COURT: Overr
11:09:48	19	MR. BUTNER:
11:09:48	20	Q Thank you.
11:09:49	21	A So in the neighbo
11:09:52	22	Q Okay. Would you
11:09:54	23	vehicle came and went?
11:09:55	24	A Right in here.

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11:09:59

- y short distance, a quarter mile.
- could change the subject for

you recall a bunch of sheriff the Bridle Path residence just to

- f anybody else living in that -esidence besides Carol Kennedy?
- I mean I didn't know who was there was a vehicle that came and
- vehicle that came and went, do d when it came and went over
- Honor, sorry. Beyond the scope

ruled.

- orhood of the guesthouse.
- show us basically where that
 - Okay. So it would go in and out of that driveway

11:10:03 1 opening right in front of Bridle Path there? 1:10:05 Yes. Yes. Would you show us where the driveway opening is? 11:10:06 Q And then would it park over there by the 11:10:10 4 11:10:12 5 questhouse? 11:10:12 6 A Yes. 7 Okay. Would you show us where you saw it park? 11:10:12 In this area here. 11:10:15 8 9 Okay. And mentioning -- Mr. Sears mentioned the 11:10:16 Q 11:10:32 10 monsoon rains. Before the monsoons came, I think were the 11:10:36 11 words that he used. Do you recall when the monsoons came in July --11:10:40 12 13 11:10:40 A No. 1:10:40 -- of 2008? 14 Q 15 11:10:42 A No. Do you know if it had rained any time either 11:10:43 16 Q 11:10:47 17 before or right after July 2nd of 2008? 18 A I don't remember, no. 11:10:51 You don't have any recollection of that at all? 11:10:52 19 Q 11:10:54 20 A No. No. So the monsoons might have already arrived and 21 11:10:55 Q you just don't remember it as of July 2nd, 2008? 22 11:10:57 11:11:00 23 A That's correct. MR. BUTNER: I don't have any further questions, 24 11:11:19

Thank you very much.

25

sir.

11:11:20

1 THE COURT: I have some questions from the 11:11:24 1:11:27 2 jurors. We are going have to talk about them and then we 11:11:29 will be right back with you. (Discussion held off the record.) 11:11:31 4 OUESTIONS BY JURY 5 11:13:24 THE COURT: We find we have a few more questions 11:13:24 6 11:13:28 7 for you, Mr. Drake. Question. Do voices carry far from the 11:13:29 8 9 ranch land? 11:13:34 10 THE WITNESS: Absolutely. It's very quiet in 11:13:34 11:13:39 11 this side of the house and -- yes. 11:13:41 12 THE COURT: Question. What were you welding? THE WITNESS: I was -- I think it was a defroster 13 11:13:46 heater control. 1:13:52 14 THE COURT: For a vehicle? 11:13:54 15 11:13:56 16 THE WITNESS: Part of a vehicle, yes. 11:13:57 17 THE COURT: How long did it take you to weld what you were welding? 18 11:14:00 19 THE WITNESS: Well, I was probably doing other 11:14:01 11:14:04 20 things, but I -- I couldn't tell you right now how long it took. 11:14:09 21 THE COURT: Okay. Do you have any idea what the 22 11:14:10 23 high temperature was that day? 11:14:12 THE WITNESS: No idea. It's very cool in my 24 11:14:14 shop, so I keep the doors closed and I only step out when 25 11:14:18

11:14:22	1	I need to.
1:14:23	2	THE COURT: Did you hear dogs barking around that
11:14:26	3	time, presuming that they are talking about when you heard
11:14:30	4	the voice or cough.
11:14:32	5	THE WITNESS: No.
11:14:33	6	THE COURT: What was the tone of the voice or
11:14:39	7	voices that you heard? It says laughing? Casual? Heated
11:14:43	8	or angry, if you can characterize.
11:14:47	9	THE WITNESS: It was just a partial a partial
11:14:49	10	and it didn't sound anything abnormal.
11:14:53	11	THE COURT: Further jury questions?
11:14:57	12	All right. I thought I heard one.
11:15:09	13	(Discussion held off the record.)
11:15:41	14	THE COURT: Couple more and then finish off with
11:15:46	15	the lawyers having any follow-up to these.
11:15:48	16	How long did it take you to get home from
11:15:51	17	work or did it at that time?
11:15:54	18	THE WITNESS: About 20 minutes.
11:15:57	19	THE COURT: And approximately how soon after you
11:16:01	20	got home did you start to welding?
11:16:04	21	THE WITNESS: I I don't honestly know. I
11:16:11	22	don't know.
11:16:11	23	THE COURT: All right. Follow-up by the lawyers?
11:16:15	24	Mr. Butner?
11:16:17	25	REDIRECT EXAMINATION

11:16:17	1	MR. BUTNER:
11:16:19	2	Q Mr. Drake, had you ever heard dogs barking over
11:16:23	3	at the Kennedy residence?
11:16:26	4	A I can't recall that I did, no.
11:16:27	5	Q Did you hear any dogs barking that night?
11:16:29	6	A Nothing that that I could say now, no.
11:16:35	7	MR. BUTNER: Thank you, sir. No further
11:16:36	8	questions.
11:16:37	9	THE COURT: Mr. Sears.
11:16:37	10	RECROSS-EXAMINATION
11:16:37	11	MR. SEARS:
11:16:38	12	${f Q}$ Did you hear any sounds that night of any kind
11:16:41	13	that you thought were coming from inside Carol's house?
11:16:46	14	A Only what I have said.
11:16:49	15	Q I was of the impression you thought the coughing
11:16:52	16	and the voice were both outside of the house, and I was
11:16:55	17	asking about sounds that you thought were coming from
11:16:57	18	inside the house.
11:16:57	19	A Oh, no. No. I'm sorry. I didn't understand.
11:17:00	20	MR. SEARS: No other questions. Thank you, sir.
11:17:02	21	THE COURT: Mr. Butner?
11:17:03	22	MR. BUTNER: No further questions.
11:17:04	23	THE COURT: Jurors? I don't see any additional
11:17:07	24	questions.
11:17:07	25	Did you want to excuse Mr. Drake from

11:17:11	1	further participation in the case?
11:17:12	2	MR. BUTNER: Yes, Judge. From the State's point
11:17:14	3	of view, he certainly may be excused.
11:17:17	4	MR. SEARS: Yes, he can be excused.
11:17:19	5	THE COURT: What I was asking and what you need
11:17:20	6	to know is you are not subject to recall. You are
11:17:24	7	excused. You can stay and watch further proceedings if
11:17:26	8	you care to or you can go about your business, whatever
11:17:28	9	you choose, and thank you for coming.
11:17:30	10	THE WITNESS: Thank you very much.
11:17:33	11	THE COURT: I don't think I have given the jury
11:17:35	12	or staff a break to speak of, so let's take about a ten to
11:17:41	13	15 minute break.
11:17:42	14	Remember the admonition, please.
11:17:45	15	(Recess.)
11:34:45	16	THE COURT: Record reflects the presence of the
11:34:46	17	jury, the defendant and his counsel, the prosecution team.
11:34:50	18	Mr. Butner.
11:34:52	19	MR. BUTNER: Thank you, your Honor. I would like
11:34:54	20	to call Captain Ness to the stand, please.
11:35:22	21	THE BAILIFF: Raise your right hand, please.
	22	DANIEL CARL NESS
11:35:30	23	called, sworn, and testified as follows:
11:35:30	24	THE BAILIFF: Watch the steps. Have a seat.
11:35:40	25	THE COURT: You may proceed.

11:35:41	1		DIRECT EXAMINATION
1:35:41	2		MR. BUTNER: Thank you, your Honor.
11:35:42	3	Q	Good morning, sir.
11:35:45	4	A	Good morning.
11:35:46	5	Q	Would you please tell us your full name.
11:35:48	6	A	Daniel Carl Ness.
11:35:50	7	Q	And what is your occupation?
11:35:52	8	A	I am a captain paramedic with Central Yavapai
11:35:56	9	Fire Dis	trict.
11:35:56	10	Q	And how long have you been with the Central
11:36:02	11	Yavapai 1	Fire District, first of all?
11:36:03	12	A	Nearly 25 years.
11:36:05	13		THE BAILIFF: You want
1:36:06	14		THE COURT: Would you mind pulling the microphone
11:36:09	15	a little	closer up. I need to have people down at the end
11:36:13	16	be able	to hear you.
11:36:14	17		THE WITNESS: Okay.
11:36:15	18		THE COURT: Thank you.
11:36:16	19		MR. BUTNER:
11:36:16	20	Q	Okay. So your name is Captain Daniel Ness?
11:36:20	21	A	Correct.
11:36:21	22	Q	And you have been with Central Yavapai Fire
11:36:23	23	District	for almost 25 years?
11:36:24	24	A	Correct.
11:36:25	25	Q	And what do you do for Central Yavapai Fire

11:36:35	1	District? What are your duties?
1:36:36	2	A I'm first of all, as a captain, I direct an
11:36:41	3	engine company, and I am also a paramedic.
11:36:46	4	Q And how long have you been a paramedic?
11:36:48	5	A 25 years.
11:36:49	6	$oldsymbol{Q}$ Is the paramedic the same thing as an EMT?
11:36:54	7	A It's a higher level.
11:36:57	8	Q And were you performing your duties as a captain
11:37:05	9	and also as a paramedic on July the 2nd of the year 2008?
11:37:12	10	A Yes, I was.
11:37:13	11	$oldsymbol{Q}$ Do you remember on that date responding to a
11:37:19	12	location out Williamson Valley Road at 7485 Bridle Path?
11:37:26	13	A Correct, yes.
1:37:27	14	$oldsymbol{Q}$ How did you happen to be called out to 7485
11:37:37	15	Bridle Path?
11:37:38	16	A We were called for med to respond to confirm a
11:37:42	17	901-H which is a deceased person.
11:37:45	18	Q And what time were you dispatched?
11:37:50	19	A At 21:28.
11:37:56	20	Q So that's 9:28?
11:38:04	21	A Correct.
11:38:04	22	${f Q}$ Okay. 9:28 p.m. Never was too good at the
11:38:10	23	military time thing, even though I spent a little time in
11:38:15	24	the military.
	~ -	

11:38:16 25

But so you were dispatched at 9:28 p.m. to

11:38:21 1 1:38:25 3 11:38:30 11:38:34 4 11:38:39 5 11:38:45 11:38:49 7 8 11:38:59 9 11:39:13 10 11:39:15 11:39:38 11 12 11:39:39 13 11:39:40 1:39:41 14 11:39:44 15 11:39:46 16 11:39:50 17 18 11:40:01 11:40:02 19 11:40:02 20 21 11:40:07 22 11:40:09 11:40:12 23 24 11:40:13

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11:40:18

that location. Approximately what time did you arrive?

- **A** At 21:40.
- Q And upon arrival there, what did you do?
- A We were directed that this was a potential crime scene. We were walked or escorted in to the home to the back bedroom or office. Whatever it was.
- Q Can we have this -- we will show some photos here, Captain Ness.

And you got a D in A.V.

THE BAILIFF: Right.

MR. BUTNER:

- Q Captain, can you see that screen?
- A Yes, I can. Yes.
- Q You can move to a position where it's visible for you clearly, if you need to.

Let me show you what's admitted into evidence as Exhibit Number 2251. You arrived there in the dark; is that correct?

- A That's correct.
- **Q** Okay. Does this particular photograph of this residence look familiar to you?
- A Somewhat. I remember the stairway going up to the home.
- **Q** Okay. Did you enter through that doorway on the front there?

1 Ą Yes, I did. 11:40:19 1:40:20 Okay. And then let me show you -- or were you --11:40:26 let me show you what is admitted into evidence as Exhibit 11:40:29 Do you recall seeing that? 11:40:40 5 Like I say, it was in the dark, so I don't A remember that, no. 11:40:45 6 11:40:46 7 Okay. But you indicated you were escorted down a 8 hallway; is that correct, sir? 11:40:50 9 Α Affirmative. 11:40:51 11:40:52 10 Q Let me show you what is admitted into evidence as 11:40:56 11 Exhibit 2242. Do you recall seeing that particular 11:41:04 12 hallway? It was also fairly dark in there, um, so I don't 13 11:41:05 recall all the photos and other stuff that's in there. 11:41:11 14 Okay. You're not really sure? 11:41:14 1.5 Well, I know we went down a hallway there. 11:41:16 16 11:41:19 17 Whether that's it or not. Okay. Then let me show you what is admitted into 11:41:21 18 Q 19 evidence as Exhibit 2276. Do you recall observing this 11:41:27 11:41:39 20 particular scene? Yes, I do. 11:41:40 21 Α Is this what you encountered when you went down 22 11:41:42 11:41:49 23 the hallway? 11:41:49 24 A Yes.

<u>1</u>1:41:50 25

Q

And upon seeing this particular scene, what did

11:41:53 1:41:54 11:42:02 11:42:05 11:42:13 11:42:14 11:42:22 11:42:35 11:42:37 11:42:37 10 11:42:41 11:42:43 11:42:43 11:42:50 11:42:53 11:42:55 11:42:58 11:43:01 11:43:03 11:43:06 11:43:07 11:43:12

you do?

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We initially checked to see if she had any viable pulse. We attached our monitor to her to see if there was any heart rate. And just basically observed the more obvious injuries.

Let me show you what is admitted into evidence as Q Exhibit 2328. Can you see the body located in the lower area of the photograph there?

A Yes.

Is that the position that you recall it being in Q when you encountered it?

Α Yes.

Do you see the white patch on the leg there? Q

Is that one of our electrodes. A Uh-huh.

That is what I was going to ask you. Q

It's hard -- yeah, that's one of ours. A Yeah.

Are you the person that actually checked the Q pulses on the body?

Myself and my firefighter Ryan Aspa both checked A to double check.

Okay. And then for what reason were the patches Q affixed to her body?

That's for our cardiac monitor so you can monitor Α and see if she had any heart rate.

Would you tell us how you do that, please? Q

11:43:21	1	A	We attached four electrodes to her, to the
11:43:27	2	monitor,	which gives us any kind of cardiac activity at
11:43:33	3	all.	
11:43:33	4	Q	And where are those electrodes attached?
11:43:37	5	A	Typically left leg, right leg, and then upper
11:43:43	6	right arı	m or left arm or chest and I think just so we
11:43:48	7	didn't h	ave to move her, they're probably attached to her
11:43:51	8	arms.	
11:43:52	9	Q	So you were careful not to move the body?
11:43:54	10	A	Affirmative.
11:43:55	11	Q	You have been to crime scenes before?
11:43:58	12	A	Yes.
11:43:59	13	Q	And do you know do you have any idea how many?
11:44:03	14	A	No.
11:44:05	15	Q	So you attached these electrodes to the body; is
11:44:09	16	that cor	rect?
11:44:09	17	A	Correct.
11:44:10	18	Q	And then what do you do?
11:44:11	19	A	Observed the monitor to see if there is any
11:44:15	20	cardiac	output or electrical activity.
11:44:18	21	Q	In this particular case with the body of Carol
11:44:20	22	Kennedy?	
11:44:21	23	A	She was asystole, which means there was
11:44:24	24	absolute	ly no cardiac activity at all.
11:44:27	25	Q	And then upon gathering that kind of information,

11:44:31	1	what did	you do with that information?
1:44:33	2	A	In this case, I patched to Yavapai Regional
11:44:40	3	Medical (Center to tell them what we found and then we were
11:44:44	4	able to p	pronounce her at the scene.
11:44:46	5	Q	She was pronounced dead at the scene?
11:44:50	6	A	Correct.
11:44:50	7	Q	I found another photograph that might be a little
11:44:53	8	bit bette	er. Exhibit Number 2329. That Elmo doesn't
11:45:09	9	you can s	see the patches on
11:45:15	10	A	Her upper shoulder.
11:45:18	11	Q	on the right leg and the right shoulder; is
11:45:22	12	that cor	rect?
11:45:22	13	A	Correct.
11:45:22	14	Q	How would you describe that position that she was
11:45:27	15	found lay	ying in?
11:45:29	16	A	I believe I described her as left lateral
11:45:36	17	recumbent	z.
11:45:38	18	Q	What would that be?
11:45:39	19	A	On her side primarily.
11:45:41	20	Q	What did you call it again?
11:45:43	21	A	Left let me read just to make sure I get it
11:45:46	22	correct.	I had her patient was right lateral recumbent
11:46:02	23	with her	right arm under her torso.
11:46:04	24	Q	And were there obvious signs of injury to her?
11:46:08	25	A	Yes.
		1	

1	Q What were those?
2	A The skull injury in particular.
3	Q Did you see any other injuries to her?
4	A No. We didn't go beyond that.
5	Q Would you have had to move the body and examine
6	it more carefully?
7	A Correct.
8	$oldsymbol{Q}$ And the skull injury, what type of skull injury
9	was it?
10	A Um I described it as massive head trauma. It was
11	a long skull fracture, approximately three-quarter inch
12	wide, approximately six to seven inches long.
13	Q And did you attribute that to be the fatal injury
14	for Carol Kennedy?
15	MR. SEARS: Foundation.
16	THE COURT: Sustained.
17	MR. BUTNER:
18	Q Did you make any decisions in terms of what
19	caused her death?
20	MR. SEARS: Same objection.
21	THE COURT: Sustained.
22	MR. BUTNER:
23	Q Are you the person that pronounced her dead?
24	A Actually officially Dr. Rounseville from Yavapai
25	Regional would be the doc physician that pronounced her.
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

11:47:18	1
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11:47:21	3
11:47:22	4
11:47:24	5
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11:47:33	8
11:47:35	9
11:47:39	10
11:47:46	11
11:47:52	12
11:47:57	13
11:48:04	14
11:48:10	15
11:48:11	16
11:48:12	17
11:48:15	18
11:48:16	19
11:48:19	20
11:48:21	21
11:48:25	22
11:48:30	23
11:48:43	24

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- Q And how was it that he was able to pronounce her dead? He wasn't there, right?
 - A That is correct.
 - **Q** Would you explain to us how that works?
- A We relay the information that we have gathered and then he's able to make that determination from the information that we give him.
 - Q What information did you provide him?
- A That we had a 53 year old female with massive head trauma. That she was asystole in three leads. In other words, no cardiac output at all. Zero respirations. Zero pulses. That her extremities were somewhat cool to the touch, and that her pupils were dilated and fixed.
- Q And did you make any decisions in terms of a cause of death?
 - A Not necessarily, no.
- **Q** At the scene did you make any kind of determination in that regard?
- A The head injury would seem the obvious cause, yes.
 - Q How long were you at this particular scene?
- A We checked on scene at 21:40 and I believe we left the house at 21:58 and we were in service at 22:11.
- Q Where did you go -- where did you come from to get to this particular residence?

		1	
11:48:48	1	A	Station 57 in Williamson Valley. It's on the
11:48:50	2	corner o	f Outer Loop Road and Williamson Valley Road.
11:48:54	3	Q	And when you went into the scene, was it in the
11:49:01	4	same sta	tus as it's depicted in this photograph?
11:49:04	5	A	With the exception of the lights being on.
11:49:08	6	Q	The lights were off?
11:49:09	7	A	Yes.
11:49:09	8	Q	And it was dark?
11:49:10	9	A	Correct.
11:49:12	10	Q	What did you use in order to see the body to
11:49:16	11	examine	it?
11:49:17	12	A	Initially we were the deputies on scene used
11:49:21	13	their fl	ashlights and then we did turn one light on in
11:49:25	14	that bed	room.
11:49:27	15	Q	Do you remember where that light was?
11:49:28	16	A	From where that is, it would have been on the
11:49:31	17	wall tow	ards me.
11:49:33	18	Q	So you turned a wall light on in there to see
11:49:36	19	A	Correct.
11:49:36	20	Q	the body?
11:49:38	21	A	After I asked permission to do so.
11:49:40	22	Q	Were you wearing gloves at the time?
11:49:43	23	A	Yes.
11:49:44	24	Q	So you were only there approximately, if I
	٥.5		

understood what you said, about 18 minutes?

11:49:50 25

11:49:53	1	A	Correct.
11:49:54	2	Q	And you were escorted by the deputies the entire
11:50:02	3	time that	you were there?
11:50:03	4	A	Yes.
11:50:05	5		MR. BUTNER: I don't have any further questions
11:50:06	6	of this v	vitness at this time. Thank you, sir.
11:50:18	7		THE COURT: Mr. Sears, cross-examination.
11:50:22	8		CROSS-EXAMINATION
11:50:22	9		MR. SEARS: Thank you, your Honor. Thank you.
11:50:55	10	Q	Good morning, Captain.
11:50:56	11	A	Good morning.
11:50:57	12	Q	Thank you for waiting so patiently here this
11:50:59	13	morning.	
11:50:59	14	A	You're welcome.
11:51:00	15	Q	The call originally came in to the fire
11:51:02	16	departmer	nt as a 901-H; is that right?
11:51:05	17	A	Correct.
11:51:05	18	Q	What does that stand for?
11:51:07	19	A	A deceased person.
11:51:08	20	Q	And your call then was to come and respond and
11:51:13	21	possibly	pronounce the victim deceased; is that right?
11:51:18	22	A	Correct.
11:51:19	23	Q	So when you left the fire station at Outer Loop
11:51:24	24	Road and	Williamson Valley, I understand you went code
11:51:28	25	two. Wha	at does that mean?

1 That means no lights and siren and normal traffic 11:51:29 A 1:51:35 speed limit. 11:51:35 3 Q There was no huge rush to get on the scene because you weren't being asked to do any life saving, 11:51:38 11:51:40 5 correct? 11:51:41 A Correct. 11:51:41 Okay. Tell us what you brought in to the scene, if you could? 11:51:44 -8 9 A Our cardiac monitor. I believe we probably 11:51:45 11:51:50 10 brought with us our trauma box and airway box and possibly 11:51:56 11 even our drug box, but I don't think we brought those into 12 the room. They were left in the hallway. 11:52:00 Did you see -- I am going to try -- have to turn 13 11:52:02 Q 1:52:06 the Elmo back on for a second, Phil. 14 11:52:10 15 Do you have 2350? MR. BUTNER: I do not. 11:52:13 16 (Discussion held off the record.) 11:52:14 17 18 MS. SEARS: 11:52:22 Captain, let me show you Exhibit 2242 if we can 11:52:25 19 11:52:28 20 get the projector up here. Mr. Butner had you look at this. This is this hallway that you said looks like a 21 11:52:38 hallway, but you can't be sure if it's the one you were in 22 11:52:42 11:52:45 23 that night, correct? 11:52:46 24 A Correct.

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Q

11:52:46

Do you see an object on the floor in the

11:53:01 5 11:53:02 6 11:53:02 7 8 11:53:03 9 11:53:03 11:53:05 10 11:53:06 11 12 11:53:07 13 11:53:11 1:53:14 14 11:53:17 15 11:53:19 16 11:53:21 17 11:53:22 18 11:53:26 19 11:53:30 20 11:53:34 21 22 11:53:35 23 11:53:40 24 11:53:43 25 11:53:46

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foreground up against the left-hand wall? Maybe if you step down, it might be easier to see. Kind of at a weird angle.

- A The gray suitcase looking item?
- Q Yes.
- A Yeah.
- **Q** Do you see that?
- A I do.
- Q That is not a piece of your equipment, is it?
- A No, it is not.
- **Q** Thank you.

If I told you that the evidence thus far in the trial is that the room where the body was located is that doorway. You can see it at the far end of the hall on the left. Is that your recollection that you walked all the way down the hall and in the last door?

- A Yes. Correct.
- Q Did any of the deputies or other police officers there point out any blood spatter or possible blood spatter out on this tiled hallway as you were getting close to the room?
- A I don't recall in the hallway, but I do recall that there was a footprint on the carpet that they said to be very aware of and not step near.
 - Q A footprint?

11:53:47	1	A	I believe that's what it was. Shoe print.
1:53:51	2	Q	A shoe print and it was somewhere in the carpet?
11:53:53	3	A	If I remember right.
11:53:56	4	Q	Did they also tell you about what was a possible
11:53:58	5	bloody h	andprint on the carpet?
11:54:00	6	A	They just pointed out a couple different places
11:54:04	7	to not t	ry not step there.
11:54:06	8	Q	When they said shoe print, did they put the
11:54:09	9	flashlig	ht down so you could see what they were talking
11:54:12	10	about?	
11:54:12	11	A	Yes.
11:54:12	12	Q	They wanted you to step around that?
11:54:14	13	A	Correct.
1:54:15	14	Q	Where was that in relation to the body?
11:54:16	15	A	If I recall, it would have been, as you stepped
11:54:22	16	in the d	oor, before.
11:54:25	17	Q	Between the beginning of the carpet the room
11:54:28	18	where th	e body was is carpeted, right?
11:54:30	19	A	Correct.
11:54:30	20	Q	And the hallway we see is saltillo tile, right?
11:54:35	21	Mexican	tile?
11:54:36	22	A	Okay.
11:54:36	23	Õ	Do you remember that?
11:54:37	24	A	Not particularly, but, yeah.
11:54:40	25	Q	Do you remember though that there was some

		1	
11:54:42	1	differend	ce in the floor coverings from the hallway and the
1:54:45	2	room when	re the body was?
11:54:46	3	A	Yes.
11:54:46	4	Q	That it changed somehow?
11:54:48	5	A	Yeah.
11:54:48	6	Q	Okay. And your recollection and there was a
11:54:53	7	ladder th	nat was directly across the doorway. Do you
11:54:56	8	remember	that ladder being there?
11:54:57	9	A	Yes.
11:54:57	10	Q	Okay. So that you had to duck under the ladder
11:55:00	11	and then	step over or around body to get into the room; is
11:55:03	12	that righ	nt?
11:55:03	13	A	That is correct.
11:55:04	14	Q	And your recollection is that somewhere between
11:55:07	15	the body	and the doorway you were shown what they thought
11:55:10	16	was a pos	ssible bloody footprint?
11:55:12	17	A	I believe so.
11:55:13	18	Q	And told not step on that?
11:55:15	19	A	Correct.
11:55:15	20	Q	Did you have any protective booties on your shoes
11:55:19	21	at that p	point?
11:55:19	22	A	No, we did not.
11:55:20	23	Q	Do you ever use those?
11:55:21	24	A	No.
		1	

Q Okay. And what about blood on the floor at the

11:55:22 25

11:55:27 1 entrance to this room? What about blood spatter on the 1:55:30 floor right at that doorway? Did anybody point anything 11:55:34 like that out to you that you recall? 11:55:35 A The best I can recall is that they just pointed out in general to stay away from anything that had -- was 11:55:39 5 11:55:45 6 splatter or marks on the floor. That's something you know from 25 years of doing 11:55:46 this kind of work, that it's important for you to do in a 11:55:50 8 9 possible crime scene, correct? 11:55:52 11:55:53 10 A To leave no other evidence or --11:55:57 11 Q Not get into the evidence that's there? Correct. 11:55:58 12 Okay. Was it somewhat awkward, if you remember, 13 11:55:59 Q to get positioned so that you could get down and check the 1:56:02 14 body? 11:56:05 15 11:56:05 16 Yes. And that was awkward because you had to go under 11:56:06 17 Q a ladder and then step over and turn around and face the 11:56:09 18 11:56:11 19 body? Affirmative. 11:56:12 20 Do you remember kneeling down? Did you have to 11:56:14 21 Q kneel down to do the examination you told Mr. Butner you 22 11:56:19 23 conducted? 11:56:22 If I recall, we tried very hard not to kneel 24 11:56:22

down. I don't think we did.

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11:56:27

11:56:28	1	Q	Okay. And you placed electrodes on the body and
11:56:33	2	then the	leads went out into the hallway? Is that how you
11:56:37	3	did it?	
11:56:37	4	A	Yes.
11:56:37	5	Q	Do you remember who was looking at the monitor in
11:56:39	6	the hall	way? Was that Ryan Aspa?
11:56:42	7	A	He made a hard copy for me and then I looked at
11:56:45	8	it also.	
11:56:46	9	Q	He could print it out in the hallway?
11:56:48	10	A	Yes.
11:56:48	11	Q	The readout and it was flat line?
11:56:51	12	A	Correct.
11:56:51	13	Q	Okay. And so the arrangement you have then is
11:56:56	14	you conta	act a physician at the hospital here in Prescott
11:57:00	15	and prov	ide them with all of this data that you have told
11:57:03	16	us about	, about what you observed?
11:57:05	17	A	Affirmative. Yes.
11:57:06	18	Q	And then you have permission to pronounce the
11:57:09	19	individu	al dead at the scene, correct?
11:57:11	20	A	Correct.
11:57:11	21	Q	Do you have a time logged in for when Ms. Kennedy
11:57:15	22	was pron	ounced?
11:57:16	23	A	I made the patch at 21:55, which would have been
11:57:21	24	pronounce	ement.
11:57:22	25	Q	9:55?

11:57:23	1	A	Correct.
11:57:24	2	Q	Okay. And you have been on you have been on
11:57:27	3	scene for	r about how long? 15 minutes maybe?
11:57:29	4	A	Yes.
11:57:30	5	Q	And there's a process when you come in the fire
11:57:33	6	trucks.	Somebody has got to chock the wheels and then you
11:57:35	7	have got	to get all your gear out; is that right?
11:57:38	8	A	Correct.
11:57:38	9	Q	Maybe put on some additional clothing?
11:57:41	10	A	Um, well, our gloves in particular.
11:57:44	11	Q	Okay. And then carry everything into the scene?
11:57:47	12	A	Yes.
11:57:47	13	Q	And then set up once you got down to the end of
11:57:50	14	the hall	there; is that right?
11:57:51	15	A	Correct.
11:57:52	16	Q	But you have been told the call came in that this
11:57:55	17	person w	as deceased, at least in the opinion of the
11:57:59	18	officers	, when you got the original call, correct?
11:58:01	19	A	Yes.
11:58:02	20	Q	Okay. And when you first looked into the room,
11:58:06	21	that was	your quick take visually, this is a person who is
11:58:09	22	not movi	ng and not breathing?
11:58:11	23	A	Correct.
11:58:11	24	Q	And has obvious head trauma?
11:58:14	25	A	Affirmative.

1 MR. SEARS: I don't have any other questions. 11:58:16 1:58:17 2 Thank you, your Honor. THE COURT: 11:58:18 3 Redirect. REDIRECT EXAMINATION 11:58:19 5 MR. BUTNER: 11:58:26 Let me show you Exhibit 2334. Do you recognize 11:58:27 6 Q 7 what's depicted in this photograph? 11:59:23 No, I don't. 11:59:27 8 A 9 You don't recall affixing this patch on the --11:59:28 Q 11:59:32 10 A Yes. 11:59:32 11 -- on the leg? I was looking at the -- yes, I remember attaching 11:59:33 12 the electrode. 13 11:59:36 Okay. And this is the blood that was pooled 1:59:37 14 Q beneath the body of the victim on this date of July 2nd, 15 11:59:42 2008, correct? 11:59:45 16 11:59:46 17 Correct. And looking at this photograph, is this the 18 Q 11:59:47 footprint or handprint that you recall the deputies asking 11:59:50 19 11:59:54 20 you to stay away from and not touch? THE COURT: You can step down. 12:00:01 21 22 MR. BUTNER: 12:00:04 23 Q Certainly. 12:00:04 That may have been it. It just seemed like it 24 12:00:08 A 25 was more distinct at the time when I looked at it, but I 12:00:20

1 know they directed me to stay away from any blood markings 12:00:23 2:00:27 2 like that at all. 12:00:28 It was something like that. You just don't 12:00:31 recall exactly what it looked like at this point? 5 Α 12:00:33 Correct. Okay. Did you see any other markings or 6 12:00:34 7 footprints around the body besides this one that's 12:00:39 depicted in this particular photograph? 12:00:42 Not that I recall. 9 A 12:00:45 Did you, in fact, stay away from that footprint 12:00:50 10 11 or hand print that's depicted in this photograph? 12:00:53 12:00:55 12 Yes. You didn't step on it or touch it or anything 12:00:56 13 2:00:58 like that? 14 15 A No. 12:00:58 When you exited the scene, had you stepped in any 12:00:59 16 Q 17 blood while you were in this particular scene? 12:01:06 Not that I was aware of. 18 A 12:01:08 And did you see any blood tracks going down the 19 12:01:09 Q 12:01:13 20 hallway? Not that I recall. 12:01:13 21 A MR. BUTNER: I don't have any further questions. 22 12:01:15 Members of the Jury, any questions 23 THE COURT: 12:01:19 for Captain Ness before he leaves? Apparently we have at 24 12:01:21 25 least one, so if I could see counsel. 12:01:25

12:01:28	1	Captain, we have to discuss them and then we
2:01:31	2	will be back.
12:01:33	3	THE WITNESS: Okay.
12:01:35	4	THE COURT: And then the lawyers are allowed some
12:01:37	5	follow-up.
12:01:39	6	(Discussion held off the record.)
12:03:02	7	QUESTIONS BY JURY
12:03:02	8	THE COURT: I have a few questions, Captain Ness.
12:03:14	9	I think this is were you bending over or
12:03:19	10	squatting when you were putting the electrodes on?
12:03:22	11	THE WITNESS: We would have been on our feet bent
12:03:26	12	over.
12:03:27	13	THE COURT: Question. Did you or your partner
12:03:30	14	ever put your knee on the carpet?
12:03:33	15	THE WITNESS: No, not that I recall.
12:03:36	16	THE COURT: I am not sure they could hear you.
12:03:38	17	THE WITNESS: No, we did not.
12:03:40	18	THE COURT: Thank you.
12:03:40	19	Do you know whether you moved the checkbook?
12:03:46	20	THE WITNESS: We didn't move anything.
12:03:49	21	THE COURT: Follow-up questions by the lawyers?
12:03:53	22	Mr. Butner?
12:03:54	23	MR. BUTNER: No further questions, Judge. Thank
12:03:55	24	you.
12:03:56	25	THE COURT: Mr. Sears?
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12:03:56	1	MR. SEARS: No, your Honor.
12:03:58	2	THE COURT: Any more questions from the jurors?
12:04:01	3	I don't see anyone raising their hands.
12:04:03	4	May Captain Ness be excused to go about his
12:04:07	5	business, not subject to recall, Mr. Butner?
12:04:09	6	MR. BUTNER: He may be excused not subject to
12:04:11	7	recall, Judge. Thank you.
12:04:13	8	THE COURT: Mr. Sears?
12:04:13	9	MR. SEARS: We do not need him recalled, your
12:04:15	10	Honor.
12:04:15	11	THE COURT: Then you are excused from further
12:04:17	12	testimony in the case, Captain Ness. Thank you for having
12:04:20	13	been here.
12:04:20	14	You can stay if you want at any time in the
12:04:24	15	process of the trial now that you have testified, but you
12:04:28	16	may go.
12:04:34	17	THE WITNESS: Thank you.
12:04:35	18	THE COURT: And we will stand in recess until
12:04:39	19	1:20. 1:20. Remember the admonition.
12:04:44	20	(Luncheon recess.)
13:31:11	21	THE COURT: Record reflects the presence of the
13:31:14	22	jury, the defendant, defense counsel, and the prosecution
13:31:17	23	team.
13:31:17	24	You may call your next witness, Mr. Butner.
13:31:20	25	MR. BUTNER: I would call Sergeant Luis Huante to

1 the stand, Judge. 13:31:23 13:31:29 LUIS HUANTE called, sworn, and testified as follows: 13:31:47 3 Little noises reminds me. Everybody THE COURT: 13:32:03 4 turn their cellphones off. 13:32:06 5 13:32:11 6 MR. BUTNER: Okay. Thank you. 13:32:35 7 May I proceed? DIRECT EXAMINATION 13:32:36 8 9 THE COURT: You may. 13:32:36 13:32:37 10 MR. BUTNER: Thank you. Please state your name for the record. 13:32:37 11 Q 12 Luis Huante. 13:32:39 13 And what is your occupation, sir? 13:32:41 I am currently employed with the Yavapai County 3:32:44 14 A 15 Sheriff's office as a sergeant. 13:32:46 And how long have you been with the Yavapai 13:32:47 16 Q County Sheriff's office? 13:32:51 17 18 A 17 years. 13:32:51 And have you had any special training to prepare 13:32:53 19 yourself for your occupation as a deputy Yavapai County 13:32:59 20 Sheriff? 21 13:33:03 Yes, sir. I have attended two academies. 22 13:33:04 A attended several schools involving police work and crime 23 13:33:07 scene investigation, homicide investigations type of 24 13:33:12

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schools.

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- Q And what academies have you attended?
- A I attended the Yavapai College Police Academy and I attended the Arizona Law Enforcement Training Academy in Tucson, Arizona.
- Q What homicide investigation schools or seminars have you attended?
- A I was a member of the Arizona Homicide

 Investigators's Association. I have attended the buried

 bodies classes. I attended the basic FBI homicide course

 and several seminars in between.
- **Q** And were you performing your duties as a Yavapai County deputy sheriff, a sergeant, on July the 2nd of the year 2008?
 - A Yes, I was.
- Q And what division at the Sheriff's office were you assigned to at that time?
 - A Criminal investigations.
 - Q And so you were a detective?
 - A That's correct.
- Q Did you have occasion on that date to respond to a location at 7485 Bridle Path?
- A Yes, I did. I responded to that address at about ten p.m. 10:14 p.m.
 - Q And upon responding to the Bridle Path address, nat did you do?

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13:35:57	24	Q	Wh	at	:
13:35:58	25	A	Τh	е	b

s advised of a suspicious death and I cene.

Tell us how you examined the scene, so to

oke with the deputies who did the initial e scene. They advised me what they had ed me to where the -- in the back bedroom was shift office, and there was a female who was

ou find out the name of the female that was

- I did.
- was her name?
- nia Carol Kennedy.
- did you observe the circumstances there in crounding her death?
- I did. They appeared suspicious at the
- Would you tell us what about those made them appear suspicious to you?

hing that stood out was there was blood on e desk, some book shelves, and the blood was directions.

- do you mean by that?
- plood appeared to have hit those objects from

13:36:01 1 different angles. I also observed a ladder that was 3:36:06 2 almost over on top of the victim and the one strange thing about the ladder was there was no blood whatsoever on that 13:36:11 13:36:13 ladder. 5 Okay. And was there blood in other areas 13:36:15 0 surrounding the ladder? 6 13:36:20 7 All around it. 13:36:21 Okay. Are they back in the cabinet? 13:36:22 8 Q 9 We are going to have to do this. 13:36:47 Okay. Let me show you what has been 13:39:28 10 13:39:43 11 admitted into evidence as Exhibit 2327. Okay. recognize what's depicted -- and you can move where your 13:40:02 12 13 seated or you can even stand up over to the side if it 13:40:05 3:40:09 makes it easier for you to see. 14 Do you recognize what's depicted in Exhibit 15 13:40:11 2327? 13:40:15 16 Yes. This is the office-make room, bedroom. 13:40:15 17 Α Okay. And you see the body at the base of the 13:40:18 18 Q ladder there? 13:40:21 19 13:40:22 20 A Yes, I do. Okay. What was it about this scene that caused 13:40:23 21 Q 22 you to be suspicious? 13:40:29 23 A Like I mentioned, there was no blood on the 13:40:30 2.4 ladder. There was blood --13:40:32

Excuse me.

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There's a laser pointer right over

13:40:37 3:40:42 13:40:44 13:40:47 13:40:52 13:40:55 13:40:58 13:41:01 13:41:06 13:41:11 13:41:16 13:41:18 13:41:20 13:41:24 13:41:27 13:41:28 13:41:29 13:41:33 13:41:36 13:41:38 13:41:43

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there on the witness stand next to the micro -- there it is. I thought it was by the microphone.

A The ladder itself had no blood whatsoever. There was blood on this wall here. There was blood on some storage trays that were outside in the hallway. They had blood. There was blood on this wall here. There was blood on the desk. There was blood on these shelves and there was blood on some boxes that had some sort of books and stuff down here. But there was none on this ladder.

Q And the blood that was on the bookcases, you said that came -- you said this blood came from different directions. How could you tell that?

A It appeared to me when -- when something strikes something, it will strike and then it will hit in the direction that it was going.

Q All right.

A So you could see on the wall the direction that the blood was coming from. Also you could see that on the desk. You could see that on the shelf. You could see that on the boxes that were on the bottom and on the body itself.

Q Let me show you what is admitted into evidence as Exhibit 2328. Okay. Could you tell us what you're talking about from this photo?

A Back here there's blood on the wall right there.

13:42:13 1 You could see that it hit the wall and then just dripped 3:42:16 2 down. 3 13:42:16 Okay. And that is almost directly behind the ladder. A 13:42:17 So again it's very suspicious that the ladder has no blood 13:42:20 5 whatsoever when there is blood on the wall behind it. 13:42:24 13:42:27 7 All right. And then the bookcases -- where were the book -- where are the bookcases that you observed 8 13:42:30 9 blood on? 13:42:32 13:42:32 10 A The bookcases are down here, and those had blood 13:42:38 11 and it appeared to me that the blood had --MR. SEARS: Your Honor, I object. Foundation. 12 13:42:40 13 701, 702. This witness is not an expert. 13:42:42 3:42:47 THE COURT: He can testify as to his 14 15 observations. Mr. Butner, if you'd frame your questions. 13:42:48 MR. BUTNER: All right. 13:42:51 16 What did the blood look like that was on the 13:42:52 17 0 18 bookcase if you could describe it for us, please. 13:42:56 It appeared to me that the blood had hit that 19 A 13:42:59 13:43:02 20 shelf while they was standing. MR. SEARS: Same objection. Move to strike. 21 13:43:04 Final conclusion. 22 13:43:12 THE COURT: Overruled on the motion to strike --23 13:43:13 request to strike. Again, limit the question and the 24 13:43:17

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response to 701.

13:43:23	1	MR. BUTNER:
13:43:23	2	Q Sergeant Huante, tell us what the blood looked
13:43:31	3	like, if you would, without telling us what your thoughts
13:43:35	4	were about the blood. Do you understand my question?
13:43:37	5	A It appeared that the blood had striked (sic) that
13:43:41	6	shelf in a different angle.
13:43:44	7	MR. SEARS: Same objection.
13:43:45	8	THE COURT: Overruled.
13:43:46	9	MR. BUTNER:
13:43:46	10	Q And when you say a different angle, what do you
13:43:49	11	mean by that?
13:43:50	12	A I believe that shelf was in a different position.
13:43:55	13	MR. SEARS: Same objection. Move to strike.
13:43:57	14	THE COURT: I will strike that response.
13:43:59	15	MR. BUTNER: The blood we are
13:44:01	16	THE COURT: Jury is to disregard it.
13:44:02	17	MR. BUTNER: Thank you.
13:44:03	18	Q Sorry. We're talking about the blood, right
13:44:06	19	A Yes.
13:44:06	20	Q Sergeant Huante?
13:44:07	21	So was all of the blood going the same
13:44:13	22	direction on this shelf?
13:44:15	23	MR. SEARS: Leading.
13:44:17	24	THE COURT: Overruled.
13:44:19	25	THE WITNESS: No.

13:44:20	1	MR. BUTNER:
13:44:20	2	Q What were the directions that the blood was going
13:44:26	3	on the shelf?
13:44:27	4	MR. SEARS: Foundation. Form of the question.
13:44:30	5	THE COURT: Overruled.
13:44:31	6	THE WITNESS: I believe it was going downward
13:44:34	7	and
13:44:36	8	MR. BUTNER:
13:44:36	9	Q Downward in here's the shelf right here.
13:44:39	10	Okay. Would you point to the direction in which the blood
13:44:42	11	was going on the shelf?
13:44:44	12	A In this manner.
13:44:45	13	MR. SEARS: Foundation.
13:44:47	14	THE COURT: I need to be over there. Excuse me.
13:44:58	15	All right. Thank you. Go ahead.
13:44:59	16	MR. BUTNER:
13:44:59	17	Q Okay. The question was would you point to the
13:45:01	18	direction in which the blood was going on the shelf?
13:45:05	19	A In this manner. Parallel to the shelf.
13:45:10	20	Q Okay.
13:45:11	21	MR. SEARS: May the record reflect the witness is
13:45:12	22	pointing in two directions?
13:45:15	23	MR. BUTNER: The record reflects that
13:45:16	24	THE COURT: It does not so reflect.
13:45:18	25	MR. BUTNER: Thank you.

1 13:45:19 3:45:22 2 13:45:34 13:45:37 5 13:45:38 6 13:45:40 7 13:45:44 13:45:44 9 13:45:44 10 13:45:47 11 13:45:47 13:45:48 12 13 13:45:59 13:46:03 14 13:46:04 15 16 13:46:07 13:46:08 17 13:46:09 18 19 13:46:13 13:46:13 20 13:46:14 21 22 13:46:17 23 13:46:20 24 13:46:25

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THE COURT: Would you -- I suppose to be descriptive, it reflects the direction which is parallel to the edge of the top of what is now shown as the upper part of the bookcase.

MR. BUTNER: Thank you, your Honor.

- Q So it was running this way on the shelf; is that correct?
 - A That's correct.
- Q And yet this shelf is laying on the ground, right?
 - A That's correct.
- **Q** And so did that cause you to reach a conclusion as to what the position of the shelf was at the time that the blood struck it?

MR. SEARS: Foundation. 702, 703.

THE COURT: Sustained.

MR. BUTNER:

- Q In any event, you thought that was suspicious; is that correct?
 - A That's correct. Yes.
- Q Okay. Did you see any other examples of suspicious circumstances in the crime scene aside from the ladder with no blood on it and the bookshelf down here with blood running parallel to the edge of the shelf?
 - A There was blood on this desk that was running in

3:46:34 2 13:46:36 3 13:46:38 5 13:46:42 6 13:46:44 7 13:47:29 13:47:32 8 9 13:47:43 13:47:45 10 13:48:01 11 12 13:48:01 13 13:48:02 3:48:02 14 13:48:04 15 13:48:05 16 13:48:07 17 18 13:48:10 19 13:48:11 13:48:14 20 21 13:48:15 22 13:48:18 23 13:48:25 24 13:48:28 25 13:48:30

this direction.

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Q Okay. I could not tell what direction you demonstrated the blood was running at.

A From the edge of the book -- of the desk towards -- in towards the desk.

Q Excuse me. If I could find a photograph of that.

Let me show you what has been marked and admitted into evidence as Exhibit 2325. Oops. Turn it the right direction.

Do you recognize what's depicted in Exhibit 2325.

- A Yes, I do.
- Q What is that?
- A This is the corner of the desk.
- Q Right.

A And this is the blood that I was referring to that it's in that direction and then blood that's in this direction.

Q And what about this blood down here at the base of the desk?

- A That's in another different direction.
- Q And was there also blood at the top of that desk?
- A Yes. There was up on top here and there was a piece missing from the desk, too.
 - Q And where was that piece located?

13:48:31	1	A On the floor here.
13:48:33	2	Q Is that a corner of it right there?
13:48:34	3	A Yes, it is.
13:48:35	4	Q Okay. And was there blood let me show you
13:48:45	5	what has been admitted into evidence as Exhibit 2329. Can
13:48:59	6	you see the blood that's on the corner of the desk in this
13:49:02	7	photo?
13:49:02	8	A Yes. Right there. We also had spots of blood
13:49:06	9	MR. SEARS: There is not a question pending, your
13:49:08	10	Honor.
13:49:08	11	THE COURT: Sustained.
13:49:09	12	MR. BUTNER:
13:49:09	13	$oldsymbol{Q}$ So there was blood at the corner of the desk you
13:49:12	14	just pointed to and now I am pointing to it, right?
13:49:14	15	A Yes.
13:49:15	16	Q And then was there blood in other locations on
13:49:17	17	the desk?
13:49:18	18	A Yes, there was. There was right here on the
13:49:20	19	calendar.
13:49:22	20	Q And all of these different blood drops in various
13:49:28	21	directions, what did that cause you to think?
13:49:31	22	MR. SEARS: Foundation. 702, 703.
13:49:34	23	THE COURT: Sustained.
13:49:36	24	MR. BUTNER:
13:49:36	25	Q Let me show you what is admitted into evidence as

13:49:40 1 Exhibit 2330. Is that the way the scene looked when you 3:49:53 were there? 3 Α 13:49:54 Yes. Okay. And is this a little bit better photograph 13:49:54 Q of the corner of the desk? 13:49:57 5 13:49:59 A Yes, it is. 13:50:00 7 Okay. Could you point to the blood that you were Q talking about on the corner of the desk? 8 13:50:02 13:50:04 9 A Right there. 13:50:05 10 Q Okay. And then was there another area where there was a large amount of blood on the side of the desk? 13:50:11 11 On the other side and this side and the other 12 13:50:14 13 side. 13:50:20 3:50:20 Okay. And was that blood going the same 14 Q 15 direction as the blood that was up on the corner of the 13:50:24 13:50:26 16 desk? 13:50:26 17 A No, it was not. And then this is the bookcase that you were 18 13:50:27 Q talking about --13:50:31 19 13:50:31 20 A Yes. 21 Q -- earlier? 13:50:31 Where the blood was going in the same 22 13:50:33 direction as the parallel edge of the desk? 23 13:50:34 2.4 That's correct. 13:50:37 25 The bookcase? 13:50:38 Q

13:50:39	1	A That's correct.
13:50:49	2	$oldsymbol{Q}$ Now, in addition to inspecting that bedroom back
13:50:53	3	there, did you also go around the outside portion of the
13:51:00	4	house?
13:51:00	5	A Yes, we did. We conducted a brief search
13:51:03	6	outside.
13:51:04	7	${f Q}$ And did you find blood locations in any other
13:51:06	8	places outside the house?
13:51:07	9	A Yes, we did.
13:51:08	10	Q Where?
13:51:09	11	A We found the blood drop right outside this door
13:51:12	12	on the sidewalk.
13:51:13	13	Q Excuse me.
13:51:30	14	You found it. Let me show you what has been
13:51:46	15	marked as Exhibit 2335. I guess you should resume the
13:51:53	16	stand before I do this.
13:51:55	17	May I approach, your Honor?
13:52:02	18	THE COURT: You may.
13:52:04	19	MR. BUTNER:
13:52:05	20	Q And I will give you Exhibit 2336 at the same time
13:52:11	21	actually. Do you recognize what's depicted in Exhibit
13:52:18	22	2335, first of all?
13:52:19	23	A Yes.
13:52:19	24	Q What is that?
13:52:20	25	A This is the blood drop that we found outside the

13:52:23 1 doorway with the scale. 3:52:26 Okay. Would you get that microphone a little bit 13:52:28 closer to you so that we can hear you. 13:52:30 A This depicts the blood I found outside the 13:52:35 5 doorway with the scale. Okay. And then 2336, what is depicted in that? 13:52:36 7 A close-up view of the same blood on the sidewalk 13:52:39 with the scale. 13:52:43 8 And when did you find that blood out on the 9 13:52:43 Q 10 sidewalk outside the office doorway? 13:52:47 13:52:49 11 A That night that we were doing that cursory search of the outside after I had examined the inside. 13:52:52 12 It was still dark, right? 13 13:52:54 Q 3:52:56 14 Α Yes. Were you walking around with a flashlight? 15 13:52:56 Q 16 Yes, we were. 13:52:58 A 13:52:59 17 Q Is that when you discovered that blood? Yes. 18 A 13:53:01 Okay. I would move for the 19 MR. BUTNER: 13:53:01 admission of Exhibits 2335 and 2336. 20 13:53:03 MR. SEARS: May I see them? 13:53:07 21 22 MR. BUTNER: Certainly. 13:53:09 23 MR. SEARS: No objection. 13:53:24 13:53:25 24 MR. BUTNER: Thank you. THE COURT: 2335, 2336 are admitted. 25 13:53:26

13:53:29	1		MR. BUTNER: May I publish, your Honor?
3:53:32	2		THE COURT: You may.
13:53:33	3		MR. BUTNER: Thank you.
13:53:38	4	Q	Now I am showing you Exhibit 2335, correct?
13:53:46	5	A	Yes.
13:53:47	6	Q	And is this the office doorway right up here in
13:53:50	7	the uppe	r left-hand corner of the photograph?
13:53:52	8	A	That's correct.
13:53:53	9	Q	And how come the scale is there?
13:53:57	10	A	So that we can see what the size of it of the
13:54:01	11	blood dr	op is.
13:54:02	12	Q	And then this is Exhibit 2336 and you do have
13:54:11	13	that las	er pointer, right?
3:54:13	14	A	Yes, sir.
13:54:13	15	Q	Can you point to where the blood drop on this is
13:54:16	16	or do yo	u need the original photograph to point to it?
13:54:18	17	A	I believe it's right there.
13:54:21	18	Q	Just look likes it's part of the concrete in this
13:54:23	19	photogra	ph?
13:54:25	20	A	Yes.
13:54:26	21	Q	But the original photo shows the blood drop?
13:54:29	22	A	Much closer. Much clearer.
13:54:31	23	Q	Okay. And did that cause you to be suspicious?
13:54:36	24	A	Very much.
13:54:38	25	Q	So after scrutinizing the scene and the office
		I	

13:54:50 13:54:54 5 13:55:00 13:55:04 7 13:55:05 13:55:08 8 9 13:55:11 13:55:13 10 13:55:21 11 13:55:27 12 13 13:55:52 3:55:58 14 15 13:56:01 13:56:03 16 13:56:10 17 18 13:56:11 13:56:11 19 13:56:18 20 13:56:18 21 22 13:56:22 23 13:56:22 24 13:56:26 25 13:56:31

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and discovering this blood drop outside the office door, what did you do then?

A We -- at that time, it was approximately about an hour into the incident when I have learned that the daughter Charlotte Democker had reached the home.

- Q Okay.
- A And fortunately she was with Jacob.
- Q Charlotte Democker and Jacob Janusek had arrived at the Bridle Path residence?
 - A That's correct.
 - Q You can take this down.

So upon Charlotte Democker's arrival at the Bridle Path residence, what did you do?

A I assigned one of my detectives to speak with Charlotte and I spoke with Jacob.

- **Q** And did you interview Jacob in connection with this particular incident?
 - A Yes, I did.
- **Q** And we have already heard testimony from Jacob in this case.

After obtaining information from Jacob, then what did you do?

A As I was speaking with Jacob, another vehicle drove up to the scene and it was a gray BMW and it was Mr. Democker.

13:56:31	1	Q And what did you do when Mr. Democker arrived at
. 3:56:38	2	the scene?
13:56:38	3	A I went and spoke with him.
13:56:40	4	Q Did you conduct an interview with Mr. Democker at
13:56:48	5	that point in time?
13:56:48	6	A Yes, I did.
13:56:49	7	Q And was it a recorded interview?
13:56:51	8	A Yes, it was.
13:56:52	9	Q And was a transcript prepared of that interview?
13:56:57	10	A Yes.
13:56:59	11	Q Let me show you what has been marked for
13:57:56	12	evidentiary purposes as Exhibit Number 958. I would ask
13:58:06	13	that you
3:58:07	14	May I approach, your Honor?
13:58:08	15	THE COURT: You may.
13:58:09	16	MR. BUTNER:
13:58:10	17	Q Do you recognize that transcript?
13:58:19	18	A Yes, I do.
13:58:20	19	Q You have reviewed it already?
13:58:21	20	A Yes, I have.
13:58:22	21	Q Is that a true and accurate proofread transcript
13:58:26	22	of your audio interview, the first one, that you had with
13:58:30	23	Mr. Democker on July the 2nd of the year 2008?
13:58:35	24	A Yes, it is.
13:58:36	25	MR. BUTNER: I would move for the admission of

1 Exhibit Number 958 at this time. 13:58:38 3:58:41 MR. SEARS: Cumulative. Best evidence is the 13:58:42 3 audio recording. THE COURT: Response? 13:58:46 5 Judge, we do have an audio recording MR. BUTNER: 13:58:50 of the interviews with Mr. Democker, interviews 1 through 13:58:53 13:58:59 7 7, which once I lay the foundation for each one of them, we would also seek to have admitted. But at this time, 8 13:59:03 this witness cannot lay the foundation for interview 13:59:07 13:59:11 10 number one and interview number four, and so --13:59:14 11 THE COURT: This only pertains to his own 12 interview? 13:59:16 13 13:59:16 MR. BUTNER: Exactly. 3:59:18 14 THE COURT: Objection is overruled. 958 is 15 admitted. 13:59:20 MR. BUTNER: 13:59:22 16 So when you spoke with Mr. Democker, you recorded 13:59:22 17 Q 18 that interview; is that correct, sir? 13:59:27 Yes, I did. 13:59:28 19 Α And did you also speak with him in a third 13:59:29 20 interview? Who did the first interview with Mr. Democker, 13:59:35 21 22 just to clarify? 13:59:41 23 A Detective Doug Brown. 13:59:42 Was that while he was on the telephone with 24 13:59:44 Mr. Democker before Mr. Democker arrived at the scene? 25 13:59:46

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- A That is correct.
- Q So then you had an interview with Mr. Democker at the crime scene and that's Exhibit Number 958 that you have in your hand, right?
 - A That's correct.
- **Q** And then did you have a subsequent interview with Mr. Democker at another location?
 - A Yes, we did.
 - Q And where was that at?
 - A At the Sheriff's office.
 - Q And you were present during that interview?
 - A Yes, I was.
- **Q** Would you describe the circumstances under which that interview was conducted?
- A We asked Mr. Democker if he was willing to come down to the station so that we could ask a couple of questions. Some general questions about him and his wife. Friends, you know, family. Anything that was going to be out of the ordinary that might have occurred lately.
- **Q** And what was the purpose of all of those questions?
- A General background questions so that we can find out more about the victim and her activities and her friends, so that we can start conducting our investigation.

14:00:56	1	Q	Had you ascertained at that point in time that
4:00:59	2	Mr. Demod	cker was Ms. Kennedy's ex-husband?
14:01:03	3	A	Yes. He told me that.
14:01:05	4	Q	And was this was Mr. Democker taken into
14:01:10	5	custody a	and taken to the Sheriff's office?
14:01:12	6	A	No.
14:01:13	7	Q	In fact, how did Mr. Democker get to the
14:01:16	8	Sheriff's	s office?
14:01:16	9	A	He drove there in his own vehicle.
14:01:18	10	Q	Okay. Approximately what time did that interview
14:01:22	11	take plac	ce?
14:01:22	12	A	About 1:40 in the morning.
14:01:25	13	Q	So actually that was on July 3rd of the year
14:01:29	14	2008?	
14:01:29	15	A	That's correct.
14:01:30	16	Q	This this interview number two, so to speak,
14:01:33	17	in which	you were involved, was that before midnight or do
14:01:40	18	you know	actually what time that was?
14:01:41	19	A	I believe it was a little bit after midnight.
14:01:44	20	Q	So that was actually on the third, then, of 2008
14:01:48	21	also?	
14:01:48	22	A	Yes.
14:01:49	23	Q	Third of July.
14:01:51	24		Okay. Let me show you what has been marked
14:01:55	25	as Exhibi	it Number 959.

14:02:01	1	May I approach?
4:02:02	2	THE COURT: You may.
14:02:03	3	MR. BUTNER: Thank you, your Honor.
14:02:04	4	Q Would you take a look at that particular
14:02:07	5	transcript. Do you recognize that transcript?
14:02:43	6	A Yes.
14:02:44	7	Q Is that a true and accurate and proofread
14:02:49	8	transcript of interview number three that you conducted
14:02:55	9	with Mr. Democker at the Yavapai County Sheriff's office
14:02:58	10	on the morning of July the 3rd of the year 2008?
14:03:01	11	A Yes, it is.
14:03:04	12	MR. SEARS: I'm sorry.
14:03:05	13	MR. BUTNER:
4:03:05	14	$oldsymbol{Q}$ And was it just you conducting that interview or
14:03:10	15	was it you and more another person or more?
14:03:12	16	A It was Detective Doug Brown and I.
14:03:15	17	Q The two of you?
14:03:16	18	A That's correct.
14:03:22	19	MR. BUTNER: I would move for the admission of
14:03:25	20	Exhibit Number 959 at this point, your Honor.
14:03:27	21	MR. SEARS: Cumulative. Best evidence. Hearsay.
14:03:30	22	THE COURT: Overruled on all three objections.
14:03:35	23	959 is admitted.
14:03:37	24	MR. BUTNER:
14:03:38	25	$oldsymbol{Q}$ And then let me show you what has been marked as

14:03:42 1 Exhibit 961. If you would take a look at that. Now, this 4:03:56 interview that you had with Mr. Democker at the Sheriff's office that morning, you recorded this interview; is that 14:03:59 3 correct? 14:04:04 Yes, we did. 14:04:04 5 A Okay. And how come we have them broken down like 14:04:05 14:04:10 7 two, three -- and this is interview number five; is that 8 correct? 14:04:13 14:04:13 9 A Yes. Why is it designated in that fashion? 14:04:13 10 Q 14:04:16 11 We would take periodic breaks and we would exit the interview room and stop the recording, and then we'd 12 14:04:20 13 start a new recording when we entered the room again. 14:04:24 4:04:27 Was Mr. Democker free to leave at all times 1.4 Q 15 during these interviews? 14:04:29 At some point, yes. 14:04:30 16 And how did Mr. Democker get to the Sheriff's 14:04:31 17 14:04:35 18 office that morning? He drove his BMW there. 14:04:36 19 Α And approximately what time did interview number 14:04:39 20 21 five take place? 14:04:44 Sometime after 1:40. 22 A 14:04:44 14:04:49 23 And who was participating in that interview 24 besides yourself and Mr. Democker? 14:04:54

Detective Doug Brown.

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14:05:04 1 MR. BUTNER: I would move for the admission of 4:05:06 2 Exhibit 961 at this point, your Honor. MR. SEARS: Cumulative. Best evidence. 14:05:09 3 Hearsay. THE COURT: Overruled. 961 is admitted. 14:05:11 MR. BUTNER: 14:05:14 5 And did you continue to have an interview with 14:05:40 6 Q 14:05:48 7 Mr. Democker on that morning of July the 3rd of the year 2008? 8 14:05:54 14:05:55 9 A Yes, we did. 14:05:56 10 Q Okay. And was it -- were there actually seven 14:06:01 11 parts to the interview? 12 That's correct. 14:06:02 14:06:02 13 Let me show you what has been marked as Exhibit Q 4:06:38 14 962. Do you recognize that, sir? Yes, I do. 14:06:56 15 A What is it? 14:06:57 16 Q It's the continuation of the interview. 14:06:58 17 Is that a true and correct and proofread copy of 18 Q 14:07:01 the interview, the continuing interview that you had with 14:07:04 19 Mr. Democker on the morning of July the 3rd of the year 14:07:07 20 2008, section number six? 14:07:11 21 22 14:07:14 A Yes. 23 MR. BUTNER: I would move for the admission of 14:07:15 24 Exhibit Number 962, your Honor. 14:07:17 25 THE COURT: Objections? 14:07:21

4:07:26 THE COURT: 962 is admitted. 14:07:29 3 MR. BUTNER: Thank you. 14:07:46 4 Q Okay. And then let me show you what's been marked as Exhibit Number 310 in this case. 14:07:56 5 14:08:01 May I approach again, Judge? 14:08:04 7 THE COURT: You may. Thank you. 14:08:05 8 MR. BUTNER: 9 Do you recognize that particular exhibit? 0 14:08:10 14:08:17 10 Α Yes, I do. 14:08:22 11 And is that a true and correct proofread copy of the seventh section of the recorded interview that you had 14:08:29 12 13 with Mr. Democker on the morning of July the 3rd of the 14:08:32 4:08:35 14 year 2008? 14:08:36 15 A Yes, it is. And is that the interview that you and Doug Brown 14:08:39 16 Q 14:08:44 17 were conducting? Α Yes. 14:08:45 18 That interview was also -- it was audio recorded 14:08:46 19 Q 14:08:51 20 completely; is that correct? And also video recorded. 14:08:53 21 Yes. 22 Video recorded in part; is that right? Not in 14:08:55 its entirety and when I say that interview, I should be 23 14:08:59 24 more precise. 14:09:04 First of all, let me just at this point move 14:09:05 25

MR. SEARS: No objection.

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14:09:07 1 4:09:12 2 14:09:12 14:09:23 14:09:38 5 6 14:09:39 14:09:40 7 14:09:40 9 14:09:40 10 14:09:41 11 14:09:48 14:09:50 12 13 14:09:56 14:09:57 14 15 14:09:58 16 14:10:03 17 14:10:04 14:10:06 18 19 14:10:09 14:10:13 20 14:10:16 21 22 14:10:20 23 14:10:23 24 14:10:26 25 14:10:31

for the admission of Exhibit Number 310 at this time, your Honor.

THE COURT: Objections?

MR. SEARS: Your Honor, I need a moment, please.

I have a question on voir dire of this

witness.

THE COURT: You may.

VOIR DIRE EXAMINATION

MR. SEARS: Thank you.

Q Detective, 310 for identification is a transcript and let me see if I understand what you're saying. This is the audio portion of an audio and a videotape made at that time of Mr. Democker?

A Yes.

Q And it was you and Detective Doug Brown conducting this interview; is that right?

A That's right.

Q Were either of you also utilizing a tape recording device in addition to the one that was connected to the audio recording device?

A We had digital audio recording devices that we used and we also used a audio video recorder.

Q Okay. Can you tell me which of those three recording devices then was used to generate the audio from which this transcript was made?

14:10:33	1	A	I believe it was the audio.
14:10:37	2	Q	From a video camera basically?
14:10:40	3	A	No. From the digital audio recorder.
14:10:43	4	Q	Whose?
14:10:44	5	A	Doug Brown's.
14:10:47	6	Q	And where was that located?
14:10:49	7	A	It was I believe it was in his he has a zip
14:10:55	8	up binde	and I believe it was placed inside.
14:10:57	9	Q	And where was your portable audio recorder?
14:11:00	10	A	I did not have one.
14:11:02	11	Q	So there were two recorders? There was this one
14:11:05	12	in Detect	tive Brown's zip up binder, right?
14:11:10	13	A	Yes.
14:11:10	14	Q	And there was another one that was connected to a
14:11:13	15	camera?	
14:11:14	16	A	That's correct.
14:11:15	17	Q	And you are telling me that this transcript is
14:11:17	18	from the	one that's connected to the camera, not Detective
14:11:21	19	Brown's?	
14:11:21	20	A	The one from the digital. We have digital audio
14:11:24	21	recorders	S.
14:11:25	22	Q	Yes.
14:11:26	23	A	That's what this is from.
14:11:28	24	Q	Doug Brown's?
14:11:29	25	A	Yes.
		I	

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14:11:42	3
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14:11:56	9
14:12:02	10
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14:12:09	12
14:12:09	13
14:12:11	14
14:12:18	15
14:12:21	16
14:12:27	17
14:12:29	18
14:12:32	19
14:12:52	20
14:12:56	21
14:12:59	22
14:13:00	23
14:13:01	24
14:13:06	25

- **Q** Did you listen to the recording made by his recording device when you were proofreading this transcript?
 - A Yes, I did.
- **Q** Did you also listen to the audio portion of the recording made by the video camera system?
 - A I saw the video and audio.
- Q Okay. You would agree, wouldn't you, that there are gaps in the audio portion captured by the video camera? There are portions of the conversation in this transcript that are not captured in that audio off the camera?
 - A I don't think so.
- **Q** There's a portion of this transcript at Bates
 1861 apparently where you and Detective Brown step outside
 the interview room.
 - A We stepped out several times.
- Q I am looking particularly at page five which is Bates 1861 in the copy that I have. Also 1862 which is page six of this transcript. Those are places where you and Detective Brown stepped outside of the interview room, correct?
 - A Yes.
- Q Would you agree that the camera recording device would not have captured these conversations because you

Let me

14:13:08 1 were not in the room you were having those? 14:13:11 2 Doug Brown's audio recording device would have 14:13:14 3 captured it. 14:13:15 Q That is not my question. My question was about the camera in the room 5 14:13:17 6 where Mr. Democker was located. 14:13:20 7 Ask again please. 14:13:23 Okay. This is a transcript of an interview with 14:13:24 Q Mr. Democker, correct? 9 14:13:31 10 Yes. 14:13:32 A 11 There are portions that I have identified to you 14:13:32 Q 12 14:13:35 on page five and six which consist of conversations between you and Detective Brown outside the presence of 14:13:37 13 14:13:41 Mr. Democker, correct? 14 15 14:13:42 A Yes. 14:13:43 16 Q Thank you. 17 Those are hearsay, your Honor. 14:13:45 With regards to the rest of the THE COURT: 14:13:47 18 19 exhibit, do you have any objections to that? If those are 14:13:50 14:13:53 20 redacted? 14:13:56 21 MR. SEARS: Let me -- I do, your Honor. tell you my concern. 14:13:59 22 THE COURT: Tell me the objections that you have. 23 14:14:00 MR. SEARS: Complete lack of completeness, your 24 14:14:02 Honor. There were two competing recordings of two 25 14:14:05

1 14:14:07 14:14:09 2 3 14:14:10 4 14:14:14 5 14:14:20 14:14:23 6 7 14:14:26 8 14:14:30 14:14:30 9 14:14:33 10 14:14:36 11 12 14:14:38 13 14:14:41 14:14:48 14 15 14:14:51 14:14:54 16 14:15:00 17 14:15:06 18 14:15:11 19 14:15:14 20 14:15:19 21 22 14:15:19 23 14:15:21

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competing transcripts. This is hearsay. These are hearsay.

THE COURT: I will direct that the portions of Exhibit 310 that are outside the presence of the defendant are hearsay, and those are not subject to admission through this exhibit. So to the extent this exhibit contains that, I am going to deny its admission at this time.

MR. BUTNER: If we redact those portions, Judge,
I can re-move for the admission of this exhibit?

THE COURT: You may, yes.

MR. BUTNER: And then to the extent this -- that those portions are hearsay, can I move for the -- I would like to move for the admission of the portions of this exhibit that are not hearsay, excluding the portions we have just been discussing on pages five and six, and I can ask the detective to be specific in terms of the lines that are encompassed in those discussions.

THE COURT: All right. Your objection is to completeness with regard to this exhibit. Any other objections that you may have?

MR. SEARS: Your Honor, we were confused until now about the differences between these transcripts.

Until Detective Huante testified, we were guessing that there was another recorder laying there, but there is

14:15:31 1 4:15:33 2 14:15:36 14:15:39 14:15:42 5 14:15:43 6 7 14:15:47 Mr. Democker? 14:15:52 8 9 14:15:52 14:15:53 10 14:15:56 11 14:15:59 12 13 14:16:04 14:16:08 14 14:16:12 1.5 do so. 16 14:16:13 14:16:13 17 18 14:16:16 14:16:17 19 14:16:17 20 14:16:20 21 Q 22 14:16:27 23 14:16:41

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nothing in any of these transcript that would have told us that. So there are two transcripts and two sets of recordings. One made by the camera and one now that we understand is made by Detective Brown's pocket recorder. I understand the difference.

THE COURT: Okay. Do you have objections to the portions of 310 that were made in the presence of

MR. SEARS: No.

THE COURT: All right. With that understanding,

I will direct the redaction of those portions of the

transcript and will admit 310. So to the extent that you

wish to use it or quote from it in terms of testimony, you

may do so or ask questions based on it. Either side may

do so.

MR. BUTNER: Thank you, your Honor.

THE COURT: But it won't go to the jury at its present form.

DIRECT EXAMINATION (Resumed)

MR. BUTNER: Right.

Q Just to be clear, Detective Huante, if you go to page five of this exhibit, there's a note there that -- five lines from the bottom, does a discussion begin that does not include Mr. Democker?

A That's correct.

14:16:50	1	Q Okay. And it continues to the bottom of that
14:16:55	2	page on page five?
14:16:59	3	A Yes.
14:17:00	4	Q And does it continue on to page six?
14:17:12	5	A Yes, it does. Up until it says background
14:17:16	6	voices.
14:17:17	7	$oldsymbol{Q}$ Okay. Which is about midway to two-thirds of the
14:17:22	8	way down that page?
14:17:23	9	A Yes.
14:17:24	10	Q Okay.
14:17:25	11	THE COURT: May we take a marker and have him
14:17:27	12	mark those portions that are outside the presence of
14:17:32	13	Mr. Democker.
14:17:32	14	MR. BUTNER: Thank you, Judge. Yes.
14:17:37	15	MR. SEARS: May I see that when the witness is
14:17:39	16	done?
14:17:40	17	THE COURT: Yes.
14:17:41	18	MR. BUTNER: Just draw a line at the top where
14:17:45	19	the conversations begin that don't include Mr. Democker
14:17:51	20	and then a line at the bottom of the conversations where
14:17:56	21	they end.
14:18:02	22	THE COURT: Green marker is being used for the
14:18:04	23	record.
14:18:04	24	MR. SEARS: Thank you, your Honor.
14:18:11	25	(Witness complies.)

14:18:12 1 4:18:15 2 14:18:19 14:18:21 4 5 14:18:24 6 14:18:27 7 14:18:29 14:18:32 9 14:18:35 10 14:18:38 14:18:40 11 14:18:41 12 14:18:43 13 14:18:46 14 15 14:19:12 14:19:16 16 14:19:19 17 18 14:19:23 19 14:19:33 14:19:35 20 14:20:06 21 22 14:20:07 23 14:20:10 24 14:20:11

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MR. BUTNER: And then with those portions excised, Judge, I would move for the admission of this exhibit at this time. 310.

THE COURT: I think I can conditionally admit it subject to the redactions and now that we know with the marker what should by redacted.

Are there any others, Detective Huante, that were outside the presence -- any other places than what you have marked that were outside the presence of the defendant?

THE WITNESS: Not that I can remember right now, sir.

THE COURT: Mr. King, if you would show it to Mr. Sears what has been marked.

What I am going to do is direct the prosecution to provide new pages that will be substituted for those marked through.

MR. BUTNER: I will do that, Judge.

THE COURT: Basically I was sustaining the hearsay objection.

Have you had, folks, sufficient time to review the exhibit so it can go back to the clerk yet?

MR. SEARS: I'm sorry?

THE COURT: The original exhibit, can that go back to the clerk now?

MR. SEARS: I think we handed it back. 14:20:15 1 4:20:18 THE BAILIFF: It's with the witness. 14:20:19 THE COURT: All right. Thank you. 14:20:22 Go ahead. MR. BUTNER: Thank you, your Honor. 14:20:23 5 During the course of your interview with 6 14:20:24 Mr. Democker, did you talk to him about what had been 7 14:20:28 going on between he and his ex-wife, Carol Kennedy, in the 14:20:35 weeks and days immediately before her death on July 2nd of 14:20:43 10 the year 2008? 14:20:48 14:20:50 11 A Yes, we did. And what did he tell you about that? 14:20:51 12 Q MR. SEARS: Best evidence. We have now an audio 13 14:20:54 and a transcript. What he said is what he said, your 14:20:56 14 15 Honor. 14:21:01 THE COURT: Let me see counsel at side bar. 14:21:01 16 17 (Discussion held off the record.) 14:21:11 Before we proceed on, would you spell THE COURT: 14:28:27 18 19 your last name for the jury please. 14:28:48 THE WITNESS: 14:28:50 20 Yes. It's H-U-A-N-T-E. THE COURT: H-U-A-N-T-E? 14:28:56 21 22 THE WITNESS: Yes. 14:28:58 23 THE COURT: Thank you. You may proceed. 14:28:59 MR. BUTNER: Thank you, your Honor. 24 14:29:01 Let's -- when you saw Mr. Democker that night, 25 Q 14:29:02

14:29:11	1	when you came to the crime scene, you encountered him; is
:29:15	2	that correct?
14:29:15	3	A Yes, I did.
14:29:16	4	Q And how was he dressed at that time?
14:29:19	5	A He was wearing a T-shirt, shorts, and I believe
14:29:23	6	sandals.
14:29:24	7	Q And did you take note of anything about
14:29:31	8	Mr. Democker's physical appearance at that point?
14:29:34	9	A Yes. I saw some scratches on him. One in
14:29:37	10	particular that caught my attention was on his leg due to
14:29:40	11	the fact that it was still bleeding.
14:29:41	12	Q Ultimately did you notice some other scratches or
14:29:48	13	Mr. Democker?
:29:49	14	A Yes. I saw some on his arm.
14:29:52	15	Q Okay. Let me may I approach, Judge?
14:30:59	16	THE COURT: You may.
14:31:00	17	MR. BUTNER:
14:31:00	18	Q Let me show you what has been marked as Exhibit
14:31:03	19	Number 2396. Do you recognize what's depicted in that
14:31:09	20	exhibit?
14:31:10	21	A Yes. That is Mr. Democker wearing his shorts,
14:31:12	22	his T-shirt and I believe there was sandals.
14:31:15	23	Q That's how he was dressed that night?
14:31:17	24	A Yes, he was.

In fact, were you present when that photograph

14:31:18 25

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1 was taken? 14:31:19 4:31:20 I was in the office, yes. 14:31:24 Q You weren't right there physically at the moment 14:31:27 the photograph was taken? 5 Α That's correct. 14:31:28 Okay. But it was taken at the Yavapai County 14:31:29 6 7 Sheriff's office? 14:31:32 Yes, it was. And it was done under my direction. 14:31:33 8 Okay. And let me show you Exhibit Number 2397 9 Q 14:31:36 10 and do you recognize that particular photograph? 14:31:45 14:31:48 11 Yes. This is Mr. Democker's arm. And is that how his arm appeared that night on 14:31:51 12 0 July -- actually early morning hours of July the 3rd of 14:31:54 13 14:31:57 the year 2008? 14 15 Correct. 14:31:59 A Is this a photograph that was also taken at your 14:31:59 16 14:32:02 17 direction? A Yes. 18 14:32:02 And then Exhibit Number 2398, would you take a 19 14:32:05 14:32:10 20 look at that particular photograph. Yes. This is a close-up of his leg. No. 14:32:12 21 22 sorry. His arm again. 14:32:17 Is that a photograph that was also taken at your 23 Q 14:32:18 direction of Mr. Democker on July the 3rd of the year 2008 24 14:32:21

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at the Yavapai County Sheriff's office?

14:32:27	1	A Yes.
14:32:28	2	Q Let me show you what has been marked as Exhibit
14:32:32	3	Number 2399. Do you recognize what's depicted in that
14:32:39	4	photograph?
14:32:39	5	A Yes. Mr. Democker's leg.
14:32:41	6	Q Is that how his leg appeared on the morning of
14:32:44	7	July the 3rd of the year 2008?
14:32:46	8	A Yes.
14:32:46	9	Q Is this photograph another one taken at your
14:32:49	10	direction?
14:32:49	11	A Yes.
14:32:51	12	Q And let me show you what has been marked as
14:32:53	13	Exhibit Number 2400. Do you recognize that particular
14:33:00	14	photograph?
14:33:00	15	A Yes. It's a close-up of his leg.
14:33:04	16	Q Close-up of his leg?
14:33:06	17	A Yes.
14:33:06	18	Q And that's how it appeared on the morning of July
14:33:09	19	3rd of the year 2008?
14:33:09	20	A Yes. This is the one that was oozing or bleeding
14:33:13	21	at the scene.
14:33:14	22	$oldsymbol{Q}$ And you noticed it bleeding when you met with
14:33:16	23	Mr. Democker out at the Bridle Path scene?
14:33:21	24	A Yes.
14:33:21	25	Q Let me show you Exhibit Number 2401, and do you

14:33:29	1	recognize what is depicted in that particular photograph?
14:33:32	2	A I believe it's a photo close-up of the scratches
14:33:36	3	just above his knee.
14:33:38	4	${f Q}$ Is that how they appeared on the morning of July
14:33:41	5	3rd of the year 2008?
14:33:42	6	A Yes.
14:33:42	7	Q Once again another photograph taken at your
14:33:45	8	direction?
14:33:46	9	A Yes.
14:33:47	10	MR. BUTNER: I would move for the admission at
14:33:49	11	this time of Exhibits Number 2396 through 2401.
14:33:54	12	MR. SEARS: May I have a couple questions on voir
14:33:55	13	dire, your Honor?
14:33:55	14	THE COURT: You may.
14:33:56	15	VOIR DIRE EXAMINATION
14:33:56	16	MR. SEARS:
14:33:56	17	Q What time were these photographs taken?
14:33:58	18	A Soon after the interview that was conducted. I
14:34:03	19	believe we finished our interview around three a.m.
14:34:06	20	Q Who took these photographs?
14:34:07	21	A It was Ken Brewer.
14:34:09	22	Q He is an evidence technician at the Sheriff's
14:34:12	23	office?
14:34:12	24	A That's correct.
14:34:13	25	Q And where were you physically when these

14:34:15 1 photographs were taken? 14:34:16 In the office either speaking with Doug Brown or 14:34:20 3 on the phone. Were you in the room when the photographs were 4 14:34:21 Q 5 taken? 14:34:23 We have a big room that has many offices, and the 14:34:24 A 7 interview room is part of those offices. I was in that 14:34:28 general area. 14:34:31 8 9 And whose gloved hand is depicted in these 14:34:32 Q 14:34:36 10 photographs? 14:34:37 11 It would have to be -- I believe it was Investigator Bill Hobbs. 14:34:40 12 13 And who directed the use of this measuring scale? 14:34:42 14:34:46 That's a standard measuring device that we use 14 for photographs. 14:34:50 15 O I understand. Who directed its use in these 16 14:34:50 14:34:53 17 photographs? I did not specifically tell him. That's just a 18 14:34:53 19 common thing that we do. 14:34:56 14:35:01 20 Q Who directed which portions of Mr. Democker's 21 14:35:03 body be photographed? I told Mr. Brewer to take pictures of all the 22 14:35:04 14:35:07 23 scratches. 14:35:08 24 Did you tell him where the scratches were? <u>1</u>4:35:10 25 A Yes.

14:35:10	1	Q Mr. Democker cooperated in posing for these
14:35:13	2	pictures?
14:35:14	3	A Yes.
14:35:14	4	MR. SEARS: No objection.
14:35:16	5	THE COURT: Exhibits 2396, 2397, 2398, 2399, 2400
14:35:23	6	and 2401 are admitted.
14:35:27	7	MR. BUTNER: Thank you, your Honor, and may I
14:35:30	8	publish?
14:35:31	9	THE COURT: You may.
14:35:32	10	DIRECT EXAMINATION (Resumed)
14:35:32	11	MR. BUTNER: Thank you.
14:36:02	12	Q This is Exhibit Number 2396, and is this the way
14:36:08	13	Mr. Democker was dressed when you first met him out at the
14:36:11	14	crime scene?
14:36:12	15	A Yes, he was.
14:36:12	16	Q And he then, of course, remained dressed in this
14:36:15	17	fashion when he came down to the Sheriff's office?
14:36:16	18	A That's correct.
14:36:17	19	Q Let me show you what is admitted into evidence as
14:36:27	20	Exhibit 2399. Could you tell us what's depicted in this
14:36:35	21	particular exhibit, please?
14:36:36	22	A This is Mr. Democker's leg and the scratch.
14:36:41	23	Q Is that the scratch that was, as you put it,
14:36:44	24	oozing blood at the crime scene?
14:36:46	25	A Yes.

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14:37:42	14
14:37:42	15
14:37:47	16
14:37:48	17
14:37:52	18
14:37:53	19
14:37:54	20
14:37:55	21
14:37:58	22
14:38:02	23
14:38:05	24
14:38:06	25

- And did you take note of that there at the crime Q scene?
 - Yes, I did. A
- Then let me show you what has been admitted into evidence as Exhibit Number 2400. What's depicted in that particular photograph?
- A close-up of Mr. Democker's leg and the very same scratch.
- In fact, in this particular photograph, do you Q see it still oozing blood?
 - Somewhat here.
- Let me show you what has been admitted into evidence as Exhibit Number 2401. What is depicted in that particular photograph?
- A close-up of Mr. Democker's thigh. This is the knee and the scratches.
- Did you ask Mr. Democker how he got all of these scratches on him?
 - A Yes.
 - And what did he tell you?
- He stated that he brushed up against something while he was riding his mountain bike out on the trail.
- Q Did he indicate to you where he was riding his mountain bike?
 - He attempted to tell me, but he was very vaque A

1 14:38:10 4:38:13 2 fact he was so vaque. 14:38:14 Q 14:38:17 you a map? 5 14:38:17 A 14:38:21 14:38:26 7 14:38:29 8 9 Yes, it was. 14:38:32 A 10 14:38:33 Q 11 14:38:38 14:38:42 12 13 14:38:44 A Yes. 4:38:45 14 15 14:38:50 16 that photograph? 14:39:01 14:39:01 17 18 14:39:03 Q 19 A 14:39:14 14:39:16 20 scratches. 14:39:17 21 Q 22 14:39:21 riding his bike on the trail? 23 14:39:23 2.4 That's correct. 14:39:25

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14:39:26

and I hadn't even asked him to draw me a map due to the Okay. Did he cooperate in that regard and draw

- He drew me a map, but again it was kind of vague.
- The drawing of that map, was that part of a video recorded interview that you had going with Mr. Democker that morning on July 3rd of the year 2008?
- In fact, have you gone through the disks of that videotaped interview and marked the times in which Mr. Democker was drawing the map for you?
- Let me show you what has been admitted into evidence as Exhibit Number 2397, and what is depicted in
 - The scratches on Mr. Democker's arm.
 - And then Exhibit Number 2398?
 - A close-up of Mr. Democker's arm and the
- So if I understood your testimony, Mr. Democker told you that he got these scratches when he was out
 - Did he describe the manner in which he received Q

1 the scratches? 14:39:31 4:39:32 His statement was he just brushed up against 14:39:36 3 something on the trail, brushes on the trail. 14:39:39 4 0 Just as he was riding along? Yes. 14:39:41 5 A Did he indicate to you that he crashed his bike 14:39:41 6 Q 7 and got these scratches? 14:39:45 14:39:46 8 A No, he didn't. 9 Did he indicate to you that he got a flat tire 14:39:47 0 14:39:51 10 and it caused him to crash and get these scratches? 14:39:55 11 Α No. MR. SEARS: 14:39:55 12 Leading. THE COURT: Sustained. 13 14:39:56 4:39:57 14 MR. BUTNER: 15 Did Mr. Democker tell you whether he had gotten a 14:39:57 Q 14:40:00 16 flat tire or not? 14:40:01 17 Yes, he did. MR. SEARS: Leading. 14:40:03 18 Overruled. Answer will stand. 14:40:03 19 THE COURT: 14:40:06 20 MR. BUTNER: Your answer was? 14:40:06 21 Q 22 Yes, he did. A 14:40:08 Did he indicate -- did he tell you if he had a 23 14:40:09 Q collision or a crash at any time while he was riding his 24 14:40:15 25 mountain bike that night? 14:40:18

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A No, he did not.

Q In your interview with Mr. Democker, did he -- if I understood what you said, he described where he went riding his mountain bike on the evening of July the 2nd of the year 2008; is that correct?

A To some degree.

Q Did you ask him what time he started his ride?

A Yes, we did.

Q What time?

A He advised us he started his ride around 6:30.

Q And did he -- did you ask him how long he was on his bike ride?

A Yes, we did.

Q And what did he tell you?

A He told us that he arrived back to his vehicle somewhere around 9:30.

Q And what did he tell you about what he did when he arrived back at his vehicle somewhere around 9:30?

A That he took his bicycle apart, the front tire off, and he put the bicycle in his vehicle.

Q Did he tell you what he did after he took his bike apart and put it in his vehicle?

A He drove home.

Q Did he indicate to you that he waited a while or anything like that before he drove home?

14:42:05 1 4:42:05 14:42:07 3 14:42:07 5 14:42:09 14:42:13 6 7 14:42:16 14:42:20 9 14:42:23 14:42:27 10 14:42:30 11 14:42:33 12 13 14:42:35 4:42:39 14 15 14:42:43 14:42:45 16 17 14:42:46 18 14:42:53 14:43:14 19 14:43:33 20 14:43:35 21 22 14:43:39 23 14:43:40 24 14:43:48 25

14:43:51

MR. SEARS: Leading.

THE COURT: Sustained.

MR. BUTNER:

Q Did he tell you if he drove immediately home after putting his bike in his vehicle?

I believe he stated that he drank some water that A he had in his vehicle and he stayed there and watched the view for a while due to the fact that he knew the area because he had bought property in there before and he wanted to purchase more.

Did he tell you what streets he was riding on 0 before he went out on the trail?

I believe he advised us he was on Rainmaker and A then Love Lane and then he entered the trail.

Did he tell you the trail number that he entered?

No.

Let me show you what has been admitted into Q evidence -- thank you Phil -- let me show you what has been admitted as Exhibit 2312. Do you recognize what's depicted in Exhibit 2312?

Yes, I do. It's a map of the area of Rainmaker, A Williamson Valley and Love Lane.

And you were talking with Mr. Democker about Q where he was riding his bike on the trail; is that correct?

14:43:51	1	A Yes.
14:43:51	2	Q Had you be
14:43:58	3	asking him about th
14:44:02	4	devices in his car?
14:44:03	5	A Yes. We s
14:44:08	6	his BMW.
14:44:09	7	Q What did h
14:44:10	8	A He told me
14:44:12	9	Q And did yo
14:44:20	10	about what he did w
14:44:26	11	bike ride?
14:44:27	12	A He advised
14:44:30	13	there was no batter
14:44:34	14	So he left it in hi
14:44:39	15	bike trail ride wit
14:44:41	16	Q And so the
14:44:48	17	the GPS device in h
14:44:56	18	tell you he was ric
14:44:58	19	A Through th
14:45:03	20	he was riding his b
14:45:07	21	Q You're a m
14:45:10	22	A Yes.
14:45:10	23	Q Have you r
14:45:15	24	trails around Grani

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- een discussing with Mr. Democker before nis whether he had any navigational
 - spoke about if he had any GPS devices in
 - he tell you?
 - e he did.
- ou have a conversation with Mr. Democker with his cellphone when he went on a
- d us that his cellphone went dead. ry power left in his cellphone anymore. is vehicle. He did not take it on the th him.
- en after discussing the cellphone and his automobile, where did Mr. Democker ding his bike?
- he conversation, he eventually told me bicycle down Granite Mountain trail.
 - mountain bike rider; is that correct?
 - ridden your bike, your mountain bike on ite Mountain?
 - Yes, I have.

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Q Mr. Democker indicated to you where -- what was the start of the trail upon which he rode that night?

A Again he was very vague. He had trouble telling me exactly where the trail started. All he could tell me is that it was somewhere near Love Lane and that he was on Rainmaker and that the trailhead was somewhere in that area.

Q Did Mr. Democker tell you where he parked his vehicle on Rainmaker?

A Yes. He stated that he parked his vehicle somewhere on top of Rainmaker and that he road his bicycle down.

Q Did Mr. Democker tell you why he parked his vehicle at the top of Rainmaker?

A He advised me that he parked it on top of Rainmaker because there is houses around the trail and he didn't want to disturb the neighborhood.

Q Did you ask Mr. Democker how frequently he did ride his mountain bike?

- A Yes.
- **Q** What did he tell you in that regard?
- A He advised us that he was barely starting to get back into riding his mountain bike. That he hadn't ridden it in a while.
 - Q Did you ask Mr. Democker when the last time was

that he had been out to the residence on Bridle Path? 14:46:24 1 4:46:29 He -- it was a very long time he said. And did he -- did you ask him if he had made any 14:46:33 Q interim visits of any kind to the residence at Bridle 14:46:39 Path? 5 14:46:43 I'm sorry? Ask again. 14:46:43 A 14:46:46 7 Did you ask Mr. Democker if he had made any interim visits of any kind to the Bridle Path --14:46:49 8 9 A Yes. 14:46:51 14:46:52 10 Q -- residence? 14:46:53 11 A He told us that he had visited Carol Kennedy's home and dropped off some artwork I believe a week or two 14:46:56 12 13 before. 14:47:00 4:47:01 So if I understood what you just told me, you 14 Q asked Mr. Democker when the last time was that he had been 14:47:06 15 out to the Bridle Path residence? 14:47:09 16 14:47:11 17 Α Yes. And his answer was what? 18 14:47:11 About a week ago. He dropped off some artwork. 19 A 14:47:14 14:47:19 20 Mr. Knapp was home and Mr. Knapp opened the garage door and he placed the artwork in the garage. 14:47:22 21 Did he mention anything about dropping off a golf 22 14:47:24 0 23 club at that time? 14:47:28 Not at all. 24 A 14:47:28

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14:47:30

MR. SEARS: Leading. Leading.

1 14:47:31 4:47:32 14:47:33 3 14:47:35 4 5 14:47:35 14:47:36 14:47:38 7 8 14:47:43 9 14:47:47 14:47:51 10 14:47:53 11 14:48:01 12 13 14:48:04 14:48:10 14 15 14:48:13 16 14:48:17 14:48:19 17 18 14:48:25 14:48:29 19 14:48:30 20 14:48:32 21 22 14:48:35 23 14:48:35 24 14:48:44 25 14:48:49

THE COURT: Sustained.

MR. SEARS: Move to strike.

THE COURT: The response is stricken. Ask another question.

MR. BUTNER:

- Q In addition to artwork, did Mr. Democker mention dropping off anything else? Any other objects besides artwork when he went to the Bridle Path residence about a week-and-a-half before the death of Carol Kennedy?
 - A No, he did not. Artwork is all he mentioned.
- **Q** And did Mr. Democker describe prior to that dropping off of the artwork, how long it had been before he had been to the Bridle Path residence?
- A I don't think he stated that. It might have been months, I think he said, or I might have asked him and he said six months to my question.
- Q Okay. And did you ask Mr. Democker if he had been riding his bike at any point in time in the area of the Bridle Path residence?
 - A He said he had not.
 - Q Is that what his answer was to that question?
 - A Yes.
- Q Did you then get Mr. Democker to draw a map for you as to where he had been riding his bike in the trail area near Love Lane?

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- A Yes.
- **Q** Was that videotaped?
- A Yes, it was.
- **Q** Okay.

Judge, I think now might be a good time for us to take a brief break and see if we can get that set up.

THE COURT: I am going to take the afternoon recess, Ladies and Gentlemen. About 15 minutes. If you could be ready at about five after three or so. We will try and make a start. That is about 15 minutes from now.

Remember the admonition, please.

(Recess.)

THE COURT: I have the lawyers present. Defendant is out of the room currently.

You waive his presence?

MR. SEARS: Waive his presence.

THE COURT: We had a number of questions by the jury and some of them may have been covered on what -- for this particular witness. We have can we see photos of Mr. Democker's thigh, arm? And leg and I think we've just done that. That may have come in before you did that.

We have a question: Are there any pictures of the blood on the bookshelves? My impression is that came in after Huante's little thing with you. Can we see

15:09:45 1 the pictures, if any exist. So I think what they are 5:09:48 2 talking about are things that are closer up than what you had there. 15:09:51 3 15:09:52 MR. BUTNER: Judge. More direct. 15:09:53 5 THE COURT: 15:09:54 6 MR. BUTNER: Right. Do you want me to address 7 these questions as we go along? 15:09:56 THE COURT: Okay. Let's take those two since 15:09:58 8 9 those were --15:10:00 10 MR. BUTNER: In regard to the first one --15:10:01 11 THE COURT: Pertaining, at least, to Huante. 15:10:03 MR. BUTNER: In regards to the photos of 15:10:05 12 defendant's thigh, arm, and leg, we could pass the 13 15:10:06 originals around -- publish the originals, if that's what 5:10:12 14 they are asking for. I kind of think that maybe is. 15 15:10:14 16 MR. SEARS: Then go home for the weekend. 15:10:18 15:10:21 17 THE COURT: Yeah. MR. BUTNER: That's --18 15:10:21 19 THE COURT: Ask of this question was before the 15:10:22 15:10:24 20 display on the wall. MR. BUTNER: Maybe that would be a good idea, and 15:10:26 21 22 then in regards --15:10:29 23 THE COURT: Or alternatively rather than asking 15:10:30 it that way, after the display on the wall, does any 24 15:10:32 member of the jury still want to see the photos, the 25 15:10:39

original photos? If any raise their hand, then pass them. 15:10:45 1 5:10:49 2 MR. BUTNER: We can publish them at a different 15:10:51 3 time or something like that. 15:10:53 THE COURT: Huante is going to be the rest of the 15:10:56 5 day. MR. BUTNER: He is. 15:10:56 7 THE COURT: And into Wednesday. I am not 15:10:57 8 concerned about the when and the where. 15:11:00 MR. BUTNER: And then next question was? 9 15:11:02 10 THE COURT: The next is pictures of blood on the 15:11:04 11 bookshelf. 15:11:06 MR. BUTNER: There are other pictures of blood on 15:11:07 12 the bookshelf. That was going to be different witnesses. 15:11:11 13 Much more close-up pictures. 5:11:15 14 THE COURT: So should I say in response to that 15 15:11:16 question, there are other witnesses that will discuss 15:11:18 16 17 this. 15:11:21 MR. BUTNER: I think that would be appropriate. 15:11:21 18 MR. HAMMOND: That's fine. 19 15:11:23 15:11:24 20 THE COURT: I have been advised as well. MR. BUTNER: That --15:11:26 21 MR. HAMMOND: The next one was? 22 15:11:27 The next one is were there any blood THE COURT: 23 15:11:28 samples or DNA of Carol on Steve? What is his blood type? 24 15:11:30 Carol's blood type? That is the first set of questions. 25 15:11:35

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Other witnesses will address those 15:11:38 1 MR. BUTNER: 5:11:40 2 things, too. 15:11:41 MR. HAMMOND: That one I thought maybe the judge 15:11:44 4 should ought to say other witnesses. 5 MR. BUTNER: 15:11:48 Right. I am not sure this is the same 15:11:49 6 MR. HAMMOND: question. I don't know how much time you spent on blood 15:11:50 7 types. Excuse me. 15:11:57 MR. BUTNER: Yeah. I don't either. I don't know 9 15:11:58 10 if we spent --15:11:59 15:12:00 11 MR. HAMMOND: You may not -- you may not want to promise those issues are going to be raised. 15:12:03 12 There are other witnesses in the 13 THE COURT: 15:12:05 5:12:08 I may not respond to all of these questions right 14 now because they may be covered possibly by other 15 15:12:12 16 witnesses. 15:12:15 15:12:15 17 MR. HAMMOND: May be covered. That's probably a good idea. MR. BUTNER: 15:12:16 18 What was the blood type of the blood 19 THE COURT: 15:12:18 spot found on the sidewalk outside Bridle Path house? 15:12:20 20 What laboratory does the testing of blood tissue samples? 15:12:24 21 22 How long does it take to get the results? 15:12:28 23 MR. SEARS: Apparently a very very long time. 15:12:31 24 15:12:34 to perhaps --

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15:12:35

MR. BUTNER: Several laboratories and a long

15:12:36 1 time. 5:12:37 2 MR. HAMMOND: One trial's worth. 15:12:38 3 THE COURT: So simply responding to that one and 15:12:43 the other one about the blood on the bookshelves, saying there are other witnesses. 5 15:12:48 Concerning bloodstain on the light switch --15:12:51 6 7 that is back to the one on the light switch. 15:12:54 wondering if I should just say you will have the exhibit 15:13:00 8 in the -- because this was admitted. 9 15:13:04 MR. SEARS: Which one is that? 15:13:08 10 11 THE COURT: Is the blood on the part of the light 15:13:09 switch that turns on the light or the part that turns off 15:13:13 12 the light? 15:13:16 13 5:13:18 14 MR. SEARS: Yes. THE COURT: Look at the pictures is what I would 15 15:13:19 like to say. 15:13:21 16 MR. BUTNER: It's on the side. It isn't on the 15:13:22 17 part that turns off and on. 15:13:23 18 MR. PAPORE: It's on the cover. 19 15:13:25 THE COURT: I don't think I should comment on 15:13:27 20 15:13:29 21 that. MR. BUTNER: 22 No. 15:13:33 THE COURT: Any event, Mr. Butner, what is your 23 15:13:36 position on this? Should I just refer them to the 24 15:13:40 25 photograph? 15:13:43

1 I believe that would be the best. 15:13:43 MR. BUTNER: 5:13:45 2 THE COURT: They will have the photographs. 15:13:48 3 Already been --15:13:49 4 MR. SEARS: Maybe they want to know which way the switch toggled. If it's a three way, then the answer is 15:13:53 5 yes, because it depends on what the switch across the hall 15:13:57 You know that's true. You know -- I can guarantee 15:14:00 7 is. you there's a corresponding light switch at the other end 15:14:03 9 of the hall. 15:14:06 MR. BUTNER: That's probably true. 15:14:07 10 11 MR. HAMMOND: Maybe come on. Maybe come off. 15:14:08 15:14:14 12 THE COURT: And it is either place on the 15:14:17 13 photograph. 15:14:18 14 How would you like me to address the question of the comparisons between 2284 and 2334? 15 15:14:21 That's pretty interesting. 15:14:30 16 MR. BUTNER: 17 THE COURT: That's the one about between the two 15:14:37 pictures, the checkbook seems to have been moved. By whom 15:14:40 18 19 and why? I think that's up to them. 15:14:44 We have got a bunch of people who say 15:14:46 20 MR. SEARS: they don't know. They didn't do it. Somebody is going to 15:14:47 21 22 have to come forth. 15:14:50 THE COURT: I don't think --23 15:14:53 MR. BUTNER: Pardon? 24 15:14:54 THE COURT: I don't think I should even ask that. 25 15:14:54

1 MR. BUTNER: That would probably be a good idea. 15:14:56 5:14:59 2 It's totally within the province of the jury concerning 15:15:02 3 that. MR. SEARS: Can we ask Luis if he knows the 15:15:02 15:15:04 5 answer? THE COURT: You can. I have 2248. What is in 6 15:15:06 7 Carol's right hand? And I think you guys wanted to take a 15:15:10 look at that first before you --15:15:13 MR. SEARS: We did and we don't know the answer. 9 15:15:15 10 It maybe has something to do with the photograph. 15:15:19 11 are other photographs in which her right hand appears 15:15:20 empty. That one there appears to be something in her 15:15:23 12 hand. The question is Luis is on the stand. Can Luis 13 15:15:27 5:15:37 14 answer? MR. BUTNER: He doesn't know. He doesn't know. 15 15:15:37 MR. SEARS: He doesn't know if anything is in her 15:15:40 16 17 hand either. 15:15:42 MR. BUTNER: I didn't ask him that. 15:15:43 18 MR. SEARS: Let me show him that picture. 19 15:15:45 15:17:29 20 (Discussion held off the record.) THE COURT: Any further record you want to make 15:17:39 21 on how the Court should respond to the jury questions? 22 15:17:41 23 Mr. Butner? 15:17:43 MR. BUTNER: I don't think so, Judge. 24 15:17:45 25 have anything further. 15:17:47

15:17:48	1	THE COURT: Mr. Sears?
3:17:48	2	MR. SEARS: Did you decide you were going to ask
15:17:50	3	the question about who moved the checkbook?
15:17:52	4	THE COURT: No.
15:17:53	5	MR. SEARS: Why not? Is there a reason just so I
15:17:57	6	know.
15:17:59	7	THE COURT: Well, you can ask. You still have
15:18:03	8	cross. You can ask him.
15:18:05	9	MR. SEARS: Looks to me like you can see the EMT
15:18:08	10	patch on this one.
15:18:11	11	THE COURT: You don't
15:18:13	12	MR. SEARS: Well
15:18:15	13	MR. BUTNER: No, you don't.
5:18:16	14	MR. SEARS: Be right there.
15:18:22	15	MR. BUTNER: You can't say.
15:18:24	16	THE COURT: You can ask him. I am not going to.
15:18:26	17	Let's put it that way. The question about who moved the
15:18:29	18	checkbook.
15:18:31	19	MR. SEARS: They asked somebody.
15:18:34	20	THE COURT: They have asked nearly everybody.
15:18:40	21	MR. SEARS: So if you are not going to ask the
15:18:42	22	question, I will get to it at some point.
15:18:52	23	THE COURT: Out of these questions, Mr. Sears.
15:18:56	24	MR. HAMMOND: John.
15:18:57	25	THE BAILIFF: Gentlemen.

15:19:12 15:19:14 5 6 15:19:17 15:19:19 7 15:19:21 9 15:19:24 10 15:19:28 11 15:19:31 15:19:36 12 13 15:19:40 5:19:43 14 15 15:19:47 15:19:48 16 17 15:19:50 15:19:50 18 19 15:19:54 15:19:57 20 15:20:03 21 22 15:20:06 23 15:20:09 24 15:20:12 25 15:20:18

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THE COURT: Mr. Sears, Mr. Butner. Out of these questions, the only one that I intend to ask is the photos one. If they want to see the photos of Mr. Democker and I'll ask them if they want that. If anybody wants that, then I will have them do that.

MR. SEARS: Then you are going to give some sort of admonition or just tell them that the other witnesses are going to answer the other questions?

THE COURT: With regard to the light switch, I am going to tell them they have those photographs. I am not going to -- I suppose I should read the question and tell them that you will have the exhibits.

I am not going to ask the one about comparison between the two, but I am not going to prohibit either counsel from asking that.

MR. BUTNER: Of the photographs, you mean about the checkbook?

THE COURT: Yeah. Of the checkbook. For any particular witnesses. You all are free to ask that. With regards to the blood samples, I am going to say there are other witnesses who will be testifying about that.

And with regard to pictures of blood on the bookshelves, can we see pictures, if any exist. I am going to say there are other witnesses. So as to these particular questions, I'll simply refer them to future

15:20:21 5:20:23 15:20:25 15:20:27 15:20:30 15:20:31 15:20:33 15:20:33 15:20:35 15:20:35 15:20:39 15:20:48 15:22:46 15:22:50 15:22:53 15:22:55 15:23:02 15:23:05 15:23:11 15:23:15 15:23:17

possible evidence.

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day.

day?

THE BAILIFF: Length of this interview? How much of it are you going to be using?

MR. BUTNER: Defense want us to play the whole thing and it's --

THE BAILIFF: It's longer than the rest of the

MR. BUTNER: Is it longer than the rest of the

THE BAILIFF: That was a question?

THE WITNESS: Two-and-a-half hours.

(Discussion held off the record.)

THE COURT: Let's go on the record for that.

The Court is being advised that the exhibit, and I don't know the number, but it's the video of the interview of Mr. Democker is the part of the case that the parties and/or prosecution in particular want to play next for the jury, and I am advised this is all in one segment unlike the audio recordings that are in separate -- seven separate segments.

And my question was with an hour-and-a-half left of the day and apparently two hours, two-and-a-half hours worth of this video, whether there might be some good place to pause it or stop it, so that we can resume next week with it? I am not going to keep the jury an

15:23:39 15:23:44 15:23:47 15:23:51 15:23:56 15:24:02 15:24:10 15:24:14 15:24:17 15:24:23 15:24:28 15:24:29 15:24:33 15:24:36 15:24:38 15:24:40 15:24:40 15:24:42 15:24:45 15:24:48 15:24:51 15:24:53 15:24:57

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hour after five until six o'clock to do that if we start.

I am also advised there are at least two approximately 20 minute in length segments where nothing is happening. There's no questioning. It's video of the defendant sitting there, in essence. And so with that in mind, what proposals have --

MR. SEARS: Judge, I was under the understanding that what we had were seven separate recordings in sequence and that this -- that the video corresponds with essentially with segment three out of segment -- out of seven. And I thought it would make sense and I thought you were suggesting that we start with one. Play one. One is a telephone call with Mr. Democker. Two is Mr. Democker out at the scene and then --

THE COURT: Now that makes sense to me if you want to do that.

MR. SEARS: It's just all in sequence and then they're bracket -- after three, then there is some ones that are just audio. Am I right about that? That are just audio? Four, five and six and seven?

MR. BUTNER: No. The ones that are just audio are one and two. Those are just audio because they are either on the telephone with Mr. Democker --

MR. SEARS: Right.

MR. BUTNER: -- or at the scene with

1 Mr. Democker. Then commencing with three, that is at the 15:25:02 5:25:07 2 Yavapai County Sheriff's office. MR. SEARS: 15:25:09 3 Right. MR. BUTNER: And just a few lines into three is 15:25:09 4 when the video begins and I showed it --15:25:12 5 MR. SEARS: You did. 15:25:15 7 MR. BUTNER: -- to you in the transcript. 15:25:15 MR. SEARS: You did. 15:25:16 8 MR. BUTNER: And that is video then. 9 15:25:17 15:25:19 10 MR. SEARS: Four, five, six and seven are just 15:25:21 11 sections of the video? MR. BUTNER: Exactly. Three, four, five, six and 15:25:22 12 seven are video. 15:25:24 13 5:25:26 MR. SEARS: Okay. We start with audio one and 14 two, tiny little bit of three and then start playing the 15:25:30 15 video, and Kurt had an idea. Kurt said that -- have you 15:25:36 16 15:25:42 17 tried it on your laptop yet? VICTIM WITNESS REP: Smoother in --15:25:43 18 MR. BUTNER: Much better on this. 19 15:25:44 MR. SEARS: Voice activated. It's very choppy 15:25:46 20 15:25:49 21 and a slow process. VICTIM WITNESS REP: I haven't put the speakers 22 15:25:51 23 15:25:52 on. That wasn't even on speakers when MR. BUTNER: 24 15:25:52 15:25:54 you were playing that? 25

VICTIM WITNESS REP: I don't know if I should it 15:25:56 1 5:25:57 2 do it. 15:25:58 MR. SEARS: Go ahead. 15:25:59 MR. BUTNER: I think you should test it right 5 now, Kurt, if possible. 15:26:00 THE COURT: Well, let's finish, first, with 6 15:26:03 7 what --15:26:05 MR. SEARS: Well, that's fine. I didn't -15:26:05 8 9 understand. 15:26:06 10 THE COURT: So if you have any idea how long the 15:26:07 11 audio only things are, if we are going to do those first? 15:26:12 15:26:15 12 Are you intending to do those first? 13 MR. BUTNER: If we have an agreement to do that, 15:26:17 certainly I would do that. I think it makes more sense to 5:26:19 14 15 place the entire discussion with Mr. Democker from end to 15:26:22 end starting with the beginning. 15:26:26 16 15:26:31 17 MR. SEARS: Agreed. Okay. So given that though, we don't THE COURT: 15:26:33 18 have enough time to do all of those things this afternoon. 19 15:26:41 15:26:44 20 MR. BUTNER: We do not. THE COURT: When do you want to break it? 15:26:47 21 MR. BUTNER: I would think -- my recollection in 22 15:26:51 playing the audio, the phone call is relatively brief and 23 15:26:54 then the first audio interview is out at the scene and 24 15:26:58

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that's also relatively brief. I think we are talking

15:27:04 1 5:27:11 2 3 15:27:11 15:27:13 4 15:27:15 5 6 15:27:19 7 15:27:20 15:27:22 8 9 15:27:23 15:27:25 10 15:27:26 11 12 15:27:28 13 15:27:31 5:27:34 14 15 15:27:35 15:27:36 16 15:27:38 17 18 15:27:39 19 15:27:40 15:27:41 20 15:27:45 21 22 15:27:47 23 15:27:49 24 15:27:50

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about probably 30 minutes for all of that. Rich, I mean you have listened.

A VOICE: I think that's about right.

MR. BUTNER: I think that's about 30 minutes and then we get to the station and then that is a couple of hours.

THE WITNESS: At least two-and-a-half.

MR. BUTNER: Two-and-a-half hours. Yeah. That make sense because the whole thing is about three hours long.

THE COURT: But of this, there are these big -MR. BUTNER: Two 20 minute segments. Maybe one
is 20 minutes and one's a little bit shorter. One is 15
or something like that.

THE COURT: For the jury watching that, they would be watching only the defendant sitting there with nobody questioning him?

MR. BUTNER: Exactly.

THE COURT: No additional information?

MR. BUTNER: Right. Right.

THE COURT: Mr. Sears, did you still want to play the whole thing even though it's 20 minutes or 40 minutes of something?

MR. SEARS: I heard the Court's comment and I have some sense of where the Court's ruling would lie on

1 15:27:57 5:28:00 2 15:28:04 3 15:28:05 5 15:28:07 15:28:09 15:28:10 7 15:28:13 9 15:28:16 10 15:28:20 11 15:28:22 12 15:28:26 15:28:30 13 5:28:33 14 15 15:28:37 15:28:40 16 17 15:28:43 15:28:45 18 19 15:28:47 15:28:49 20 15:28:51 21 22

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this one, but my only concern is we all agree where those places are so that we stop and so if we are fast forwarding through, we aren't accidently fast forwarding through some statement.

> Right. I don't disagree with that. THE COURT:

I agree completely. MR. BUTNER:

I don't know how to identify because MR. SEARS: we have never, ever including today ever been able to get this video to play with sound, so that we could ever hear So we don't know what those parts are. it.

THE COURT: Would it make some sense to acknowledge that there are 20 -- then you get into a gap of, from whatever the time is at the beginning to the other, the rest of it. If you can stipulate that no conversation was taking place. It's just simply you can show them a minute of that.

MR. BUTNER: I think that does make sense. Probably be the way to handle it.

THE COURT: But not make them sit --

MR. SEARS: We have a transcript that we can follow along with and we know when it ends and we know where the next line would pick up and so if they fast forward to the place where it picks up and go back and forth until they pick up that next line.

> We can do that. MR. BUTNER:

1 15:29:05 5:29:07 2 15:29:10 15:29:15 5 15:29:19 15:29:26 7 15:29:28 15:29:30 8 9 15:29:31 15:29:32 10 15:29:36 11 12 15:29:36 15:29:40 13 5:29:40 14 15:29:43 15 16 15:29:48 15:29:51 17 18 15:29:55 19 15:30:00 15:30:03 20 15:30:07 21 22 15:30:13 23 15:30:18 24 15:30:23

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THE COURT: Do you have any problem though, because again this is a timing thing, we are going to have, you know, maybe an hour left -- 45 minutes to an hour left of breaking up the tape between stopping at one of the 20 minute segments. Play 30 seconds or a minute of that and then stop it there so that you know where to pick up next week.

MR. BUTNER: I think that's a good idea. I don't have any objection to that.

THE COURT: Start next week with continuing the playing of the tape.

MR. SEARS: That is fine. We could have Sergeant Huante step down.

THE COURT: I take your point of they kind of need to know what the whole length of the thing is and have some understanding that there were these times he was just sitting by himself there, so that they can evaluate that in their whole weighing of the statements and such. To bore them to tears by sitting there with 20 minute long segments of nothing going on, I don't see that and I appreciate your willingness to understand that and do something else pertaining to that.

So I will leave it to you in terms of where the first time frame is, where we can stop it. I am hoping that it's some place between -- real time -- 4:30,

15:30:32 1 5:30:37 2 15:30:39 3 15:30:40 5 15:30:44 6 15:30:45 7 15:30:46 8 15:30:48 9 15:30:49 10 15:43:45 11 15:44:51 12 15:44:54 15:44:56 13 15:44:59 14 15 15:45:00 15:45:04 16 17 15:45:08 15:45:12 18 19 20 15:45:13 15:45:15 21 22 15:45:18 23 15:45:20

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five o'clock. If it's a little before that, if it's like 25 after, that is okay, too.

MR. BUTNER: Okay.

THE COURT: You all have had a long week and so has the jury.

MR. BUTNER: Why don't we --

THE COURT: We can go off the record for discussions with the lawyers.

(Discussion held off the record.)

(Recess.)

THE COURT: Please be seated.

Record reflects the jury has returned.

Defendant and his counsel and prosecution team are present as well.

I received jury questions in, but I am not always sure -- excuse me -- of the timing of when I receive a particular questions versus the rest of the presentation of the evidence.

QUESTIONS BY JURY

THE COURT: I have a question: Can we see the photos of Mr. Democker's thigh, arm and legs?

And I am not sure if that came in before the display was made up on the wall or not, or if you wanted to see those photos individually. If there is anybody that wanted to see the photos individually and look at

1 15:45:30 15:45:31 2 15:45:35 3 15:45:42 5 15:45:42 6 15:45:51 15:45:51 7 15:45:54 9 15:45:56 10 15:46:00 11 15:46:04 15:46:09 12 15:46:15 13 15:46:20 14 15 15:46:24 15:46:28 16 17 15:46:32 15:46:36 18 19 15:46:40 15:46:43 20 15:46:45 21 22 15:46:50

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them, raise your hand.

Okay. So let's pass those exhibits, if you have them handy, to the jury. We will publish them in that fashion.

MR. BUTNER: Where did they go? Madame clerk has them.

THE COURT: So before do you that, Phil, let me see about a couple of the other questions.

There was a question that I received early this morning about I think when we first were coming in about where the blood allegedly was in connection with the light switch and I suppose while we're passing this picture, we would pass the other picture or pictures with regard to the light switch.

But I guess my response would be you do have the pictures as a marked exhibit and will have access to view those yourselves. If any of you would like me to pass. As long as I am passing these photos, the pictures of the light switch, raise your hand.

I will have those passed to you. We will pass those if we can find a number of the light switch.

With regard to another couple of questions.

They don't appear to be directed against -- as far as asking questions of this particular witness.

I was asked about pictures, closer pictures

15:47:12 1 5:47:21 2 15:47:27 15:47:31 4 5 15:47:37 15:47:41 6 7 15:47:44 15:47:48 9 15:47:51 10 15:47:55 11 15:48:02 15:48:05 12 13 15:48:07 5:48:10 14 15:48:12 15 15:48:15 16 15:48:16 17 18 15:48:19 19 15:48:28 15:48:29 20 15:48:32 21 22 15:48:34 23 15:48:37 2.4 15:48:48 25

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of the bookshelves and questions about lab testing and other questions in reference to a checkbook.

So with regard to those, as I said yesterday, there are a number of witnesses and a lot more days of trial that we're going to cover and so rather than respond to these questions at this particular time, the lawyers have reviewed these and assure me that probably there will be other witnesses to address these questions that were asked. So I am not going to ask them at this particular point in time simply as a timing thing.

These requested are 2396 through THE BAILIFF: 2401 inclusive.

THE COURT: And those are in reference to the alleged injuries?

THE BAILIFF: The photographs of Mr. Democker.

THE COURT: All right. And then the exhibits pertaining to the light switch, if we could have the number of those in the record. Do you have the numbers for the record?

Yes. Exhibit 2324, Judge. MR. BUTNER: will recall, this is the one where we both -- defense and State had marked the same photograph as an exhibit.

> So pass that exhibit also. THE COURT:

MR. BUTNER: And then --

THE COURT: Is there any closer than that one?

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MR. BUTNER: No. We had just zoomed in on it.

THE COURT: That is what I was wondering.

MR. BUTNER: I think we have reached a stipulation in regard to certain exhibit numbers and I can say them for the record at this time.

THE COURT: Okay.

MR. BUTNER: Exhibit Number 545, that is a statement from Mr. Democker on July the 2nd of the year 2008. I believe we have a stipulation that may be admitted into evidence.

THE COURT: That is a transcript.

MR. BUTNER: Transcript of a statement, right.

And then between Mr. Democker and Detective Doug Brown is 545.

And then Exhibit 960 is also a transcript of a statement between Mr. Democker and Detective Doug Brown that I believe we have reached a stipulation may be admitted into evidence.

And then we have a CD audio disk, Exhibit

Number 231, that is an audio recording of interviews one
through seven between members of the Yavapai County

Sheriff's office and Mr. Democker going from July the 2nd
of 2008 through July 3rd of 2008.

THE COURT: Is there a stipulation, Mr. Sears, Mr. Hammond, to admit 545, 960 and 231?

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MR. SEARS: 545 contains a tiny bit of hearsay at the beginning. We think the jury needs to hear that, so we stipulate to 545 and also 960, and the third number was?

MR. BUTNER: CD is 231.

MR. SEARS: 231. We would stipulate to 231.

THE COURT: Ladies and Gentlemen, I will admit Exhibits 545, 960 and 231 by agreement between the parties.

MR. BUTNER: And I will just put these with the rest that Detective Huante has. If you would put those in order, please, sir.

And then by agreement, Judge, I think at this point we would like to play the audio CD for the jury beginning with interview number one, Exhibit 545.

THE COURT: You may, but don't start playing it until after the photos are done.

JUROR: Almost done.

THE COURT: And they're almost there. The record can reflect they have made the rounds and the exhibits are being returned to the clerk.

Mr. Butner.

MR. BUTNER: Okay. Judge, may we go ahead then and play that audio CD?

THE COURT: You may.

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MR. BUTNER: Thank you.

JUROR: What are we hearing? We will find out.

(CD played.)

MR. BUTNER: That's the end of the first two sections, your Honor.

THE COURT: It's recommended that we terminate about now. I think I have some jury questions. May I see the lawyers before we do that. Take a stretch, everyone, if you don't mind.

(Discussion held off the record.)

THE COURT: Due to the late hour, I am going to ask some of the questions now. We will save some of them to next week.

But in particular with the recording, the questions pertaining to the recording, I am going to ask them now of the witness.

Some questions I may handle in terms of the answer.

Question for Mr. Huante. Did Mr. Democker know he was being recorded in the interviews number one or number two, if you know?

THE WITNESS: I don't believe so.

THE COURT: Who handled the interview number two since the tape says for him to ride with Detective Brown? Who's talking here?

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THE WITNESS: Towards the end, I was also speaking, but it was mostly Detective Doug Brown.

Question. If Mr. Democker was THE COURT: driving in his own car, did the officer ride with him?

At one point Mr. Democker THE WITNESS: No. asked if he can ride in his own vehicle and we said that was great, if he can do that for us and he rode his own car.

THE COURT: This question is not for the witness, I think, but probably for me and the lawyers. going to listen to any more of these, can we have the transcripts to go with them?

The transcripts that were admitted into evidence, you will have in the jury room. The CD that was admitted into evidence, you will have in the jury room.

The Court has determined not to give transcripts during the course of playing of the tapes in court, but to have you rely on what you are hearing in court. But the transcripts will be available and if they're admitted -- and I have admitted a number of them. And the recordings themselves will be available to you along with a device, if we can make sure that they play on a device, to play them, if you choose to play them back in the jury room at the conclusion of the case during your deliberations.

16:50:14 1 Any clarifications necessary, Counsel, do 6:50:18 2 you think? 16:50:18 MR. SEARS: I don't believe so, your Honor. 16:50:19 THE COURT: Mr. Butner? 5 MR. BUTNER: None from the State, Judge. Thank 16:50:20 16:50:22 6 you. 16:50:23 7 THE COURT: I think I have -- this is a similar question, but a little bit different. Why was the tape 16:50:28 8 9 recorder out of sight and not out in plain view? 16:50:31 THE WITNESS: It's been my experience that people 16:50:35 10 16:50:37 11 are more open when they don't know they are being 16:50:40 12 recorded. THE COURT: Did you, Sergeant Huante, hear a 13 16:50:41 6:50:46 cough in the audio that was played just now? 14 THE WITNESS: I am not sure if it was a cough. 16:50:52 15 think it might have been -- I'm not sure to be honest. 16:50:55 16 I'm not sure. 16:50:58 17 THE COURT: So you can't identify who it was, if 18 16:51:00 16:51:03 19 anyone, that made -- that did a cough? 16:51:08 20 THE WITNESS: Right. THE COURT: I think this is another clarification 16:51:11 21 question. Did Steve ride with you in your car or his own 22 16:51:23 23 car? 16:51:27 THE WITNESS: He rode his own car. Originally he 16:51:27 24 was driving with Detective Brown. He got in Detective 25 16:51:30

1 Brown's car and he was riding with him and then he asked 16:51:36 to drive his own car and we said that was great and he got 5:51:38 2 into his own car and he drove there to the office in his 16:51:41 3 16:51:44 own car. 5 All right. Any follow-up that the 16:51:46 THE COURT: lawyers wanted to do at this point since we just asked the 6 16:51:50 questions now before we break? Mr. Butner? 16:51:52 7 MR. BUTNER: None from the State, Judge. Thank 8 16:51:54 16:51:57 you. THE COURT: Mr. Sears. 10 16:51:57 16:51:57 MR. SEARS: I do have a couple of follow-ups. 11 FOLLOW-UP EXAMINATION 16:52:00 12 MR. SEARS: 16:52:00 13 Sergeant Huante, if I understood what happened, 6:52:00 14 Mr. Democker originally was going to drive from Bridle 15 16:52:04 Path down to the Sheriff's office with Detective Brown. 16:52:07 16 They started to. Then the plans changed and Detective 16:52:11 17 Brown took Mr. Democker back to his car and let 16:52:15 18 19 Mr. Democker drive, right? 16:52:17 16:52:19 20 A That's correct. But the instructions were that Mr. Democker was 16:52:19 21 Q to follow Detective Brown into town, right? 22 16:52:21 23 A Which he did, yes. 16:52:24 And he followed whatever way Detective Brown 24 16:52:26 25 drove into town? 16:52:29

16:52:30	1	A Yes.
16:52:30	2	Q And they arrived at the Sheriff's office
16:52:32	3	together, one car after the other?
16:52:34	4	A Yes.
16:52:34	5	Q And Mr. Democker followed instructions?
16:52:36	6	A Yes.
16:52:37	7	MR. SEARS: Thank you.
16:52:39	8	THE COURT: Anything else, Mr. Butner?
16:52:41	9	MR. BUTNER: Nothing from the State. Thank you.
16:52:42	10	THE COURT: I recognize that Mr. Butner still has
16:52:45	11	this witness on direct and there is still cross to do. So
16:52:49	12	there will be some further examination, but I think you
16:52:52	13	all have had a long week. Let's quit for the day at this
16:52:56	14	point.
16:52:57	15	Remember the admonition over the weekend.
16:52:59	16	Take care of yourselves. Sergeant Huante, you may step
16:53:02	17	down in the meantime.
16:53:03	18	We will resume next week is a three day.
16:53:07	19	We will resume Wednesday at nine o'clock then for the
16:53:10	20	continued trial.
16:53:12	21	Anything else that either side thinks I
16:53:15	22	should advise the jury about before concluding?
16:53:18	23	MR. BUTNER: Nothing further from the State,
16:53:21	24	Judge. Thank you.
16:53:22	25	THE COURT: Mr. Sears?

MR. SEARS: Nothing, your Honor. Thank you. 16:53:22 6:53:24 THE COURT: Have a good weekend, folks. Wednesday, nine o'clock, please. 16:53:26 ---000---

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CERTIFICATE

I, SANDRA K MARKHAM, Certified Reporter, do hereby certify that the foregoing pages constitute a true and accurate transcript of the proceedings had and testimony given in the hearing of the matter entitled as upon the first page hereof.

> June 23, 2010. Dated:

> > Sandra K Markham, CR, RPR, CSR

Certified Reporter

Arizona License No. 50001